

## ATTACHMENT 6

**STANDARD AGREEMENT**

STD. 213 (NEW 06/03)

AGREEMENT NUMBER

REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below

STATE AGENCY'S NAME

State Energy Resources Conservation and Development Commission (Energy Commission)

CONTRACTOR'S NAME

2. The term of this Agreement is: \_\_\_\_\_ to \_\_\_\_\_. The effective date of this Agreement is either the start date or the approval date by the Dept. of General Services, whichever is later. No work shall commence until the effective date.

3. The maximum amount of this Agreement is: \$

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement:

Exhibit A – Scope of Work	Pages
Exhibit B – Budget Detail and Payment Provisions	Pages
Exhibit C* – General Terms and Conditions	GTC 307
Exhibit D – Special Terms and Conditions (Attached hereto as part of this agreement)	Pages
Exhibit E – ARRA Federal Provisions	Pages
Attachments 1-5, Federal Language	
Exhibit F – Contacts	Page

Items shown with an Asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at <http://www.ols.dgs.ca.gov/Standard%20Language/default.htm>.

**IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.**

**CONTRACTOR***California Department of General Services Use Only*

CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

**STATE OF CALIFORNIA**

AGENCY NAME

State Energy Resources Conservation and Development Commission (Energy Commission)

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Cheryl Raedel, Contracts Office Manager

ADDRESS

1516 Ninth Street, Sacramento, CA 95814

☐ Exempt per:

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### EXHIBIT A

#### SCOPE OF WORK DESCRIBED IN THE RFQ.

##### SCOPE OF WORK

##### PURPOSE

The purpose of this Agreement between the California Energy Commission and the Contractor<sup>1</sup> is to.....(description)

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<sup>1</sup> For purposes of this Agreement, the term "Contractor" refers to the entity defined as "vendor" by Office of Management and Budget (OMB) Circular A-133 (see Subpart A, Section .105 and Subpart B, Section .210).

**EXHIBIT B****BUDGET DETAIL AND PAYMENT PROVISIONS**

~~For purposes of this Agreement, the term "Contractor" refers to the entity known as the "subrecipient" under federal law. The term "vendor" refers to those entities defined as such by OMB Circular A 133 (see Subpart B, Sections .105 and .210). The term "subawardee" refers to any entity other than a vendor that receives funding from the Contractor to carry out or support any portion of this Agreement. The following language may also periodically refer to a "subawardee" or "vendor" as a "subcontractor".~~

**1. ALLOWABLE COSTS**

- A. Allowable costs shall be determined in accordance with the provisions incorporated by reference in Exhibit E of this Agreement.
- B. The Contractor recognizes that Title 10 of the Code of Federal Regulations (CFR) section 420.18 places limitations on the use of funds available under this Agreement, and the Contractor shall comply with these limitations. The parties recognize and acknowledge that the funds available under this Agreement may be used for the purchase and installation of equipment and materials for energy efficient measures and renewable energy measures, including reasonable design costs, in accordance with 10 CFR 420.18, subdivision (e). The parties further recognize and acknowledge that the 50 percent funding limitations of 10 CFR 420.18, subdivision (e), paragraph (2), do not apply to the use of ARRA funds under this Agreement. (Refer to Section 9.7 of Exhibit 1 of the U.S. Department of Energy Funding Opportunity Announcement DE-FOA-0000052.)

**2. INVOICING PROCEDURES**

- A. For services satisfactorily rendered, and upon receipt and approval of invoices, the Energy Commission agrees to compensate the Contractor for expenditures incurred in accordance with Exhibit B. The rates in Exhibit B are rate caps, or the maximum amount allowed to be billed.
- B. Invoices shall be submitted in duplicate not more frequently than monthly. The following certification shall be included on each invoice and signed by an authorized official of the Contractor:

*I certify that this invoice is correct and proper for payment, and reimbursement for these costs has not exceeded 20% of administrative costs, including office supplies, library materials, and other equipment, is otherwise in compliance with Code of Federal Regulations (CFR) section 420.18, and will not be received from any other sources, including but not limited to a Government Entity contract, subcontract or other procurement method.*

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Send invoices to:

California Energy Commission  
Accounting Office, MS-2  
1516 Ninth Street  
Sacramento, California 95814

### C. Payment Request Format

The Energy Commission will accept computer generated or electronically transmitted invoices, provided the Contractor sends a paper copy the same day to the Energy Commission. The date of "invoice receipt" shall be the date the Energy Commission receives the paper copy.

The Contractor shall retain backup source documentation for audit purposes, and make the documentation available to the Energy Commission upon request. In accordance with 10 CFR Part 600: DOE Financial Assistance Regulations, the Contractor's accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, and contract and subcontract ~~subgrant-award~~ documents. Pursuant to 600.242, the Contractor shall retain records for three (3) years from the day the Contractor submits its final expenditure report.

The Contractor shall include appropriate provisions in each of its subcontracts ~~subawards~~ to secure adequate backup documentation to verify all subcontractor ~~subawardee and vendor~~ services and expenses invoiced for payment under this Agreement.

### D. A request for payment shall reference the Agreement number and shall consist of, but not be limited to the following:

- 1) Agreement number, date prepared, and billing period.
- 2) Work Authorization number.
- 3) The Contractor's and subcontractors fully loaded hourly labor rates by individual.
- 4) Operating expenses, including equipment, travel, miscellaneous, and materials.
- 5) Subcontractor ~~Subawardees or vendors~~ expenditures.
- 6) An indication of whether a subcontractor is ~~subawardees or vendors are~~ a California Certified Small Business or a Certified Disabled Veteran Business Enterprise.
- 7) Leverage fund expenditures, if applicable.
- 8) By task or category (as specified in Budget Detail): cumulative amounts, budgeted per agreement, billed to date, current billing, and balance of funds.

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E. All invoices must be accompanied by the following material to support the expenditure:

- 1) ~~Subcontractor Subawardees or vendors~~ invoices.
- 2) Receipts for travel, including departure and return times.
- 3) Receipts for materials, miscellaneous, and/or equipment.
- 4) A report that documents the progress of the work during the billing period; and
- 5) Any other deliverables due during the billing period.

### 3. **BUDGET CONTINGENCY CLAUSE**

A. It is mutually agreed that this Agreement shall be of no further force and effect if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the work identified in Exhibit A. In this event, the Energy Commission shall have no liability to pay any funds whatsoever to the Contractor or to furnish any other consideration under this Agreement, and the Contractor shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the Energy Commission shall have the option to either: 1) cancel this Agreement with no liability occurring to the Energy Commission; or 2) offer an Agreement Amendment to the Contractor to reflect the reduced amount.

B. It is mutually agreed that funding for this Agreement is dependent upon a federal agreement (DE-EE0000221) that has a scheduled budget period end date of April 30, 2012, and federal agreement (DE-0000905) that has a scheduled budget period end date of September 13, 2012, and is subject to the following provisions:

- 1) This Agreement is subject to any additional restrictions, limitations or conditions enacted by Congress or any statute enacted by Congress that may affect the provisions, terms or funding of this Agreement.
- 2) Funding for this Agreement is subject to the approval of the U.S. Department of Energy (DOE) and to any additional restrictions, limitations, or conditions imposed by DOE, federal law, federal court judgments, and/or federal agency orders which may affect the provisions or terms of this Agreement.
- 3) If Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.

#### 4. TRAVEL AND PER DIEM RATES

The Contractor shall be reimbursed for travel and per diem expenses using the same rates provided to non-represented state employees. The Contractor must pay for travel in excess of these rates. The Contractor may obtain current rates from the Energy Commission's Web Site at: [http://energynet/Admin/fsb/Accounting/Travel%20Summary\\_1-09.pdf](http://energynet/Admin/fsb/Accounting/Travel%20Summary_1-09.pdf).

- A. The Contractor must retain documentation of travel expenses in its financial records. The documentation must be listed by trip and include dates and times of departure and return. Travel receipts, except for travel meals and incidentals, shall be submitted with invoices requesting reimbursement from the Energy Commission.

#### 5. RETENTION

The Energy Commission shall retain from each invoice ten per cent (10%) of that invoice, excluding equipment invoices. The retained amount shall be held and released only upon approval that work has been satisfactorily completed and the Final Report (if required) has been received and approved. The Contractor must submit a separate invoice for the retained amount. Retained funds may be withheld by the Energy Commission to compensate or credit for amounts that were paid in error, or amounts that were paid but exceed the actual allowable incurred costs.

Retention may be released upon completion of tasks that are considered separate and distinct (i.e., the task is a stand-alone piece of work and could be completed without the other tasks). Exhibit B, Budget identifies the tasks for which retention may be released prior to the end of the Agreement. Tasks for administration or management of the Agreement and/or subcontractors ~~subawardees or vendors~~ are not considered separate and distinct tasks.

#### 6. PAYMENT TERMS AND CONDITIONS

Check all that apply:

- ☐ Monthly  
☐ Quarterly  
☐ Itemized  
☐ Flat Rate  
☐ In Arrears  
☐ Advance Payment to Public Prime Contractor Not to Exceed \$\_ or \_\_\_\_ % of the Agreement Amount  
☐ Advance Payment to Private Prime Contractor for Public Subcontractors ~~subawardees or vendors~~, (PRC section 25620.3(d)) Not to Exceed \$\_ or \_\_\_\_ % of the Subcontract Amount

- A. Payment shall only be made in accordance with this Exhibit B.

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- B. The Contractor is not allowed to profit from its subcontractors' subawardee and vendors' costs. Subawardees and vendors are not allowed to profit from their subawardee/vendors' costs
- C. Each request for payment is subject to the Contract Manager's approval.
- D. The Contractor shall use the salary and wage rates commensurate with approved personnel status and level of expertise.
- E. Each invoice is subject to approval by the Energy Commission's Contract Manager. The Contract Manager will not process any payment request that does not meet the following conditions:
  - 1) All required deliverables and reports have been submitted and are in accordance with the Standard of Performance clause.
  - 2) All appropriate permits or permit waivers from governmental agencies have been issued.
- F. Payments will be made to the Contractor for undisputed invoices. An undisputed invoice is an invoice submitted by the Contractor for services rendered and for which additional evidence is not required to determine its validity. The invoice will be disputed if all deliverables due for the billing period have not been received and approved, if the invoice is inaccurate, or if it does not comply with the terms of this Agreement. The Contractor will be notified via a Dispute Notification Form, within fifteen (15) working days of receipt of an invoice, if the Energy Commission disputes the submitted invoice. On any disputed invoice, the Energy Commission shall withhold payment only on the disputed portion of the invoice.
- G. The Energy Commission must receive the final invoice no later than thirty (30) calendar days after the Agreement termination date.
- H. Payment will be made in accordance with the Prompt Payment Act, Government Code Chapter 4.5, commencing with Section 927, which requires payment of properly submitted, undisputed invoices within 45 days of receipt or automatic payment of late payment penalties.
- I. The Energy Commission will pay for State or local sales or use taxes on the services rendered or equipment, or parts to the Energy Commission pursuant to this Agreement. The State of California is exempt from Federal excise taxes, and no payment will be made for any excise taxes levied on employees' wages.
- J. No payment will be made for costs identified in the Contractor's invoices that have or will be reimbursed by any other source, including but not limited to a government entity contract or subcontract or other procurement aAgreement.

## 7. COSTS: CHANGES IN CONTRACTOR PERSONNEL OR SUBCONTRACTORS, SUBAWARDEES, OR VENDORS

This paragraph contains provisions for cost changes without a formal amendment. Exhibit D contains the rules for changing or adding personnel and ~~subcontractors subawardees or vendors~~ listed in the Agreement. When a Contractor makes personnel and ~~subcontractor subawardee or vendor~~ changes in accordance with Exhibit D that do not require a formal amendment, the following rules explain the costs for which the Contractor can invoice. Changes outside these rules require a formal amendment to the Agreement.

### A. New Employee

If Contractor or ~~a subawardee or vendors~~ subcontractor adds a new employee after the contract has been executed, the new employee shall not provide services until the Commission Contract Manager approves the new employee and hourly rate in writing. The Commission contract Manager shall notify the Commission Contract Officer of the new employee before the new employee provides services.

### B. Labor Rates

The Agreement budget identifies individuals and/or job classifications and the maximum rate that the Contractor can invoice for them. The Contractor shall only invoice for the actual rates up to the maximum amount listed.

#### 1a) Contractor Changes: Addition or Replacement of Personnel

If the Contractor adds a new person to a job classification listed in the Agreement's budget or replaces a person listed in the Agreement's budget, the Contractor can only invoice for the new person's actual rate up to the maximum amount listed for that classification in the budget.

Additions or replacement of personnel can only be made within existing job classifications identified in the Contractor's budget. The Contractor cannot use for its personnel a job classification or rate of a ~~subawardee or vendors~~ subcontractor. The new person must be invoiced within job classifications that already exist in the Agreement for the Contractor.

#### 1b) ~~SubcontractorSubawardee or Vendor~~ Changes: Addition or Replacement of Personnel

If a ~~subawardee or vendors~~ subcontractor adds a new person to a job classification listed in the Agreement's budget or replaces a person listed in the Agreement's budget for that ~~subawardee or~~



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~~vendorsubcontractor~~, the ~~subcontractorsubawardee or vendor~~ can only invoice for the new person's actual rate up to the maximum amount listed for that classification in the budget.

Additions or replacement of personnel can only be made within existing job classifications identified in the ~~subcontractorsubawardee or vendor~~'s budget. The ~~subcontractorsubawardee or vendor~~ cannot use for its personnel a job classification or rate of another ~~subcontractorsubawardee or vendor~~ or of the Contractor. The new person must be invoiced within job classifications that already exist in the Agreement for the ~~subcontractorsubawardee or vendor~~.

### 2) Shift to Higher-Paying Job Classifications/Employee Promotions

Contractor and ~~subcontractorsubawardee or vendor~~ personnel listed in the Agreement's budget can be moved to a higher-paying job classification listed in the Agreement with prior written approval of Commission Contract Manager and the appropriate Deputy Director.

### 3) No New Job Classifications

The Contractor may not add new job classifications to the Agreement. If the Contractor wishes to add a new job classification to the Agreement (for instance to bring in a new person or possibly promote a person) this will require a formal amendment to the Agreement.

## C. Other Costs

- 1) If the Contractor replaces a ~~subcontractorsubawardee or vendor~~ (with prior written approval from the Energy Commission Contract Manager) the new ~~subcontractorsubawardee or vendor~~ may charge actual rates up to, but not in excess of, the same direct and indirect costs as included in the budget for the replaced ~~subcontractorsubawardee or vendor~~, and no new types of costs are allowed to be charged by the new ~~subcontractorsubawardee or vendor~~.
- 2) If a new ~~subcontractorsubawardee or vendor~~ is added to the Agreement, pursuant to the procedures in Exhibit D, Contractor can charge direct and indirect costs as approved by the Energy Commission in the add sub memo. See Exhibit D for information about the add sub memo.

## 8. BUDGET DETAIL

*(Contractor's specific budget detail inserted here at time of contract)*

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### EXHIBIT C

#### General Terms and Conditions

PLEASE NOTE: This page will not be included with the final Agreement. The General Terms and Conditions will be included in the Agreement by reference to Internet site: [http://www.ols.dgs.ca.gov/Standard\\_Language/default.htm](http://www.ols.dgs.ca.gov/Standard_Language/default.htm). Choose “General Terms and Conditions for all Contracts Except Interagency Agreements” (GTC-307) or if this Agreement is with another State agency, choose “General Terms and Conditions for Interagency Agreements” (GIA-101). ~~choose Standard Language for use in Standard Agreements or if this Agreement is with another State agency, choose Interagency Agreement.~~ The exact terms to be used will be those appearing on the website the date the Agreement is signed by Contractor.

**EXHIBIT D****SPECIAL TERMS AND CONDITIONS**

~~For purposes of this Agreement, the term "Contractor" refers to the entity known as the "subrecipient" under federal law. The term "vendor" refers to those entities defined as such by OMB Circular A-133 (see Subpart B, Sections .105 and .210). The term "subawardee" refers to any entity other than a vendor that receives funding from the Contractor to carry out or support any portion of this Agreement. This Agreement may also periodically refer to a "subawardee" or "vendor" as a "subcontractor".~~

**1. CONTRACT MANAGEMENT**

- A. The Contractor's Project Manager is responsible for the day-to-day project status, decisions and communications with the Energy Commission's Contract Manager. The Contractor may change its Project Manager by giving written notice to the Energy Commission, but the Energy Commission reserves the right to approve any substitution of the Project Manager.
- B. The Energy Commission may change its Contract Manager at any time by giving written notice to the Contractor. The Energy Commission's Contract Officer will sign the written notice.
- C. Energy Commission staff may work side by side with the Contractor's staff, to the extent and under conditions that may be directed by the Energy Commission's Contract Manager. In this connection, the Energy Commission staff will be given access to all data, working papers, etc., that the Contractor may seek to utilize.
- D. The Contractor will not be permitted to utilize Energy Commission personnel for the performance of services that are the Contractor's responsibility, unless the Energy Commission's Contract Manager agrees to such utilization in writing and an appropriate adjustment in price is made. No charge will be made to the Contractor for the services of Energy Commission employees while performing, coordinating or monitoring functions.

**2. STANDARD OF PERFORMANCE**

The Contractor shall be responsible in the performance of it and its ~~subawardee and vendors~~subcontractor's work under this Agreement for exercising the degree of skill and care required by customarily accepted good professional practices and procedures. Any costs for failure to meet these standards, or otherwise defective services, which require reperformance, as directed by Contract Manager or its designee, shall be borne in total by the Contractor/ subcontractor ~~subawardee/vendor~~ and not the Energy Commission. In the event the Contractor/ subcontractors~~subawardee/vendor~~ fails to perform in accordance with the above standard, the following will apply. Nothing contained in this section is intended to

limit any of the rights or remedies that the Energy Commission may have under law.

- A. The Contractor/~~subcontractorsubawardee/vendor~~ will reperform, at its own expense, any task, which was not performed to the reasonable satisfaction of the Contract Manager. Any work reperformed pursuant to this paragraph shall be completed within the time limitations originally set forth for the specific task involved. The Contractor/~~subcontractorsubawardee/vendor~~ shall work any overtime required to meet the deadline for the task at no additional cost to the Energy Commission.
- B. The Energy Commission shall provide a new schedule for the reperformance of any task pursuant to this paragraph in the event that reperformance of a task within the original time limitations is not feasible.
- C. If the Energy Commission directs the Contractor not to reperform a task, the Contract Manager and Contractor shall negotiate a reasonable settlement for satisfactory services rendered. No previous payment shall be considered a waiver of the Energy Commission's right to reimbursement.

### 3. SUBCONTRACTSSUBAWARDS

Contractor shall enter into agreements with the following firms and/or individuals and shall manage the ~~ir~~ performance ~~of the Subawardees or vendors~~.

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OR

No ~~subcontractorsSubawardees or vendors~~ are named for this Agreement. If ~~subcontractorsubawardees or vendors~~ are needed to perform any portion of this Agreement, the following criteria must be met and Contractor shall manage the performance of the ~~subcontractorsSubawardees or vendors~~.

AND

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relationship between the Energy Commission and any ~~subcontractorsubawardees or vendors~~, and no ~~subcontractsubaward~~ shall relieve Contractor of his responsibilities and obligations under this Agreement. The Contractor agrees to be as fully responsible to the Energy Commission for the acts and omissions of its ~~subcontractorsubawardees or vendors~~ and/or persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Contractor. The Contractor's obligation to pay its ~~subcontractorssubawardees or vendors~~ is an independent obligation from

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the Energy Commission's obligation to make payments to Contractor. As a result, the Energy Commission shall have no obligation to pay or to enforce the payment of any monies to any ~~subcontractorsubawardee or vendor~~.

- B. The Contractor shall be responsible for establishing and maintaining contractual agreements with and the reimbursement of each of the ~~subcontractorsubawardees or vendors~~ for work performed in accordance with the terms of this Agreement. The Contractor shall be responsible for: 1) scheduling and assigning ~~subcontractorsubawardees or vendors~~ to specific tasks in the manner described in this Agreement; 2) coordinating ~~subcontractorsubawardees or vendors~~ accessibility to Energy Commission staff, and 3) submitting completed products to the Contract Manager.
- C. All ~~subcontractssubawards~~ shall contain the following:
- 1) The provisions of Exhibit E. ~~Vendor subawards shall only contain the provisions of Exhibit E that reference vendors.~~
  - 2) The Recordkeeping and Inspection of Records paragraph of this agreement.
  - 3) A provision that further assignments shall not be made to any third or subsequent tier ~~subcontractssubawardee~~ without additional written consent of the Contract Manager.
  - 4) The confidentiality provisions in the Reports paragraph of this Agreement.
  - 5) The audit rights and non-discrimination provision stated in the General Terms and Conditions (Exhibit C);
  - 6) Provisions recognizing the applicability of the funding limitations of Title 10 of the Code of Federal Regulations (CFR) section 420.18, as modified by Section 9.7 of Exhibit 1 of the U.S. Department of Energy Funding Opportunity Announcement DE-FOA-0000052.
- D. Contractor shall not allow any ~~subcontractorsubawardees or vendors~~ to assign any portion of a ~~subcontractssubaward~~ related to this Agreement to a third party or subsequent tier ~~subcontractorsubawardees or vendors~~ (lower tier ~~subcontractorsubawardees or vendors~~) without first obtaining the written consent of the Contract Manager and following the procedures below "Process for Additions, Removal or Substitutions of ~~Subcontractorsubawardees or vendors~~" paragraph of this Agreement.
- E. All subcontracts entered into pursuant to this Agreement shall be subject to examination and audit by the Bureau of Energy Commission Audits for a period of three (3) years after final payment under the Agreement.
- F. Upon request by the Contract Manager or Contract Officer, Contractor shall provide copies of all contractual agreements with ~~subcontractorsubawardees or vendors~~ and lower tier ~~subcontractorsubawardees or vendors~~.

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- G. Upon the termination of any ~~subcontract~~subaward or lower tier ~~subcontract~~subaward, Contractor shall notify the Contract Manager and Contract Officer immediately in writing.
- H. In addition to any other flow-down provisions required by this Agreement, all ~~subcontract~~subawards shall contain the following: 1) the audit rights and non-discrimination provision Energy Commission in the General Terms and Conditions (Exhibit C) and in D above; 2) further assignments shall not be made to any lower tier ~~-subcontractor~~subawardees or vendors without written consent of the Contract Manager; and 3) the confidentiality provisions in the Reports paragraph of this Agreement.
- I. Process for Offering Work; Process for Adding or Substituting People Listed in the Agreement

If the Energy Commission or Contractor requires the replacement or substitution of a person listed in the contract to provide a particular service, or requires that a new person is added, the Contractor shall:

- 1) First offer the work to qualified persons already listed in this Agreement (either an employee of Contractor or a ~~subcontractor~~subawardee or vendor).
- 2) If there is no available person listed in this Agreement who can perform the work, then Contractor shall provide documentation from all the persons who were offered and declined the work to the Contract Manager. Then, Contractor may request to add a new person to the Agreement. A person added to the Agreement is thereafter treated as a person listed in this Agreement and can be offered future work without first offering it to originally listed people.
- 3) If the person added is an employee of Contractor or an existing ~~subcontractor~~subawardee or vendor, Contractor shall provide the added employee's pay rate, classification and resume to Contract Manager, and Contract Manager may approve the new person and rate. Contract Manager approval is only valid if made in writing. In addition, any added person must fit within a classification and corresponding rate already listed in the Agreement. Adding classifications and/or higher rates requires a formal amendment and cannot be accomplished through this process.
- 4) If the person to be replaced or substituted was identified in the Agreement as a Disabled Veteran Business Enterprise (DVBE) firm, refer to K below for changes to DVBEs.
- 5) If the person added is a new ~~subcontractor~~subawardee or vendor, the Contractor shall use the process outlined below.

- J. Process for Additions, Removal or Substitutions of ~~Subcontractors~~Subawardees or Vendors

The Energy Commission reserves the right to replace a ~~subcontractor~~subawardee or vendor, request additional

~~subcontractorsubawardees or vendors~~, and approve additional ~~subcontractorsubawardees or vendors~~ requested by Contractor. Such changes shall be subject to the following conditions:

- 1) If the Energy Commission or Contractor requires the replacement, substitution or addition of a ~~subcontractorsubawardee or vendor~~, the ~~subcontractorsubawardee or vendor~~ shall be selected using either:
  - (a) A competitive bid process with written evaluation criteria by obtaining three or more bids and advertising the work to a suitable pool of ~~subcontractorsubawardee or vendor~~ including without limitation: California Contracts Register; Contractor's mailing lists; mass media; professional papers or journals; posting on websites; and telephone or email solicitations; or (b) Non-competitive bid (sole source) process with a specific ~~subcontractorsubawardee or vendor~~.
- 2) Contractor may also need to comply with Disabled Veteran Business Enterprise requirements for the proposed ~~subcontractorSubawardees or vendors~~.
- 3) When a ~~subcontractorsubawardee or vendor~~ is proposed to be added, under either a competitive or non-competitive process, Contract Manager shall complete and submit to the Contracts Officer a "~~SubcontractorSubawardee or Vendor~~ Add" form. This form identifies the new ~~subcontractorsubawardee or vendor~~, resumes, what bidding method was used to obtain the ~~subcontractorsubawardee or vendor~~ (competitive or non-competitive) and rates. The proposed ~~subcontracts~~subaward can be executed only after the Contract Officer approves the ~~SubcontractorSubawardee or Vendor~~ Add form.

#### K. Disabled Veteran Business Enterprise (DVBE) Changes

- 1) Contractor shall use each DVBE identified in its proposal, any certifications listing DVBEs, or listed in this Agreement. Contractor's failure to adhere to DVBE participation as required by law, may be cause for termination of this Agreement.
- 2) If Contractor believes an identified DVBE must be replaced or substituted, Contractor shall inform Contract Manager and Contract Officer in writing of the reason for the DVBE replacement. Contractor shall attempt to replace the DVBE with a new DVBE providing the same services or identify other services in the Agreement a new DVBE could provide. Contractor shall complete revised DVBE certification forms (provided by the Contract Officer) identifying the new DVBE.

#### 4. RECORDKEEPING AND INSPECTION OF RECORDS

The Contractor shall retain backup source documentation for audit purposes, and make the documentation available to the Energy Commission and the Federal



government upon request. In accordance with 10 CFR Part 600: DOE Financial Assistance Regulations, the Contractor's accounting records must be supported by documentation that includes but is not limited to cancelled checks, paid bills, payrolls, time and attendance records, and contract and ~~subcontract~~subgrant award documents. Pursuant to 10 CFR 600.242, the Contractor agrees to maintain records that directly pertain to, and involve transactions relating to, this Agreement for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. The Contractor shall include appropriate provisions in each of its ~~subcontract~~subawards to secure adequate backup documentation to verify all subawardee and vendor services and expenses invoiced for payment under this Agreement.

In accordance with ARRA Sections 902, 1514 and 1515, the Contractor agrees that it shall permit the State of California, the United States Comptroller General or his representative, or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to: (1) examine any records that directly pertain to, and involve transactions relating to, this Agreement; and (2) interview any officer or employee of the Contractor or any of its ~~subcontractor~~subawardees or vendors regarding the activities funded with funds appropriated or otherwise made available by ARRA. The Contractor shall include this provision in all of its agreements with its ~~subcontractor~~subawardees, and vendors from whom it acquires goods or services in its execution of ARRA-funded work.

## 5. **PERFORMANCE EVALUATION**

The Energy Commission shall, upon completion of this Agreement, prepare a performance evaluation of the Contractor. Upon filing an unsatisfactory evaluation with the Department of General Services, Office of Legal Services (DGS) the Energy Commission shall notify and send a copy of the evaluation to the Contractor within 15 days. The Contractor shall have 30 days to prepare and send statements to the Energy Commission and DGS defending its performance. The Contractor's statement shall be filed with the evaluation in the Energy Commission's Contract file and with DGS for a period of 36 months and shall not be a public record.

## 6. **REPORTS**

A. **Federal Reporting Requirements:** The Contractor shall submit progress reports to the Energy Commission in accordance with Exhibit A and E.

B. **Additional Reporting Requirements:**

- 1) **Progress and Final Reports:** The Contractor shall prepare progress reports summarizing all activities conducted by the Contractor to date on a schedule as provided in Exhibit A. At the conclusion of this Agreement, the Contractor shall prepare a



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comprehensive Final Report, on a schedule as provided in Exhibit A.

- 2) **Title:** The Contractor's name shall only appear on the cover and title page of reports as follows:

California Energy Commission  
Project Title  
Contractor Number  
By (Contractor)

- 3) **Ownership:** Each report shall become the property of the Energy Commission.

- 4) **Non-disclosure:** The Contractor will not disclose data or disseminate the contents of the final or any progress report without written permission of the Contract Manager, except as provided in 6, below. Permission to disclose information on one occasion or at public hearings held by the Energy Commission relating to the same shall not authorize the Contractor to further disclose and disseminate the information on any other occasion. The Contractor will not comment publicly to the press or any other media regarding its report, or the Commission's actions on the same, except to Commission staff, the Contractor's own personnel involved in the performance of this Contract, or at a public hearing, or in response to questions from a legislative committee. Notwithstanding the foregoing, in the event any public statement is made by the Energy Commission or any other party, based on information received from the Energy Commission as to the role of the Contractor or the content of any preliminary or final report, the Contractor may, if it believes the statement to be incorrect, state publicly what it believes is correct.

- 5) **Confidentiality:** Neither the Contractor, its employees, or any tier of subcontractorsubawardees may disclose any record that has been designated as confidential or is the subject of a pending application of confidentiality, except as provided in 20 California Code of Regulations (CCR), Sections 2506 and 2507, unless disclosure is ordered by a court of competent jurisdiction (20 CCR, Sections 2501, et seq.). At the election of the Contract Manager, the Contractor, the Contractor's employees, and any subcontractsubawardee shall execute a "Confidentiality Agreement," supplied by the Contract Manager or Contract Officer. Each subcontractsubaward shall contain provisions similar to the foregoing related to the confidentiality and nondisclosure of data.

- 6) **Disclosure:** Ninety days after any document submitted by the contractor is deemed by the Contract Manager to be a part of the public records of the State, the Contractor may, if it wishes to do so

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at its own expense, publish or utilize a report or written document but shall include the following acknowledgement and disclaimer:

“This material is based upon work supported by the California Energy Commission and the U.S. Department of Energy under Award Number(s) DE-0000221 and DE-EE0000905.”

*Disclaimer.* “This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the California Energy Commission, the United States Government, nor any agency thereof, nor any employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the California Energy Commission, the United States Government, or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the California Energy Commission, the United States Government, or any agency thereof.”

### 7. **PURCHASE OF EQUIPMENT**

- A. Equipment identified in this Agreement is approved for purchase.
- B. Equipment not identified in this Agreement shall be subject to prior written approval from the Contract Manager.
- C. All equipment purchased with Federal funds shall be subject to the provisions of Title 10 Code of Federal Regulations (CFR) Part 600: DOE Financial Assistance Regulations (<http://ecfr.gpoaccess.gov>), which are incorporated by reference in Exhibit E.
- D. All equipment purchased with Energy Commission funds shall be subject to the following terms and conditions:
  - 1) Title to all non-expendable equipment purchased in part or in whole with Commission funds shall remain with the Energy Commission.
  - 2) The Contractor shall assume all risk for maintenance, repair, destruction and damage to equipment while in the Contractor's possession or subject its control. The Contractor is not expected to repair or replace equipment that is intended to undergo significant

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modification or testing to the point of damage/destruction as part of the work described in Exhibit A, Scope of Work.

- E. Upon termination or completion of this Agreement, the Energy Commission's Executive Director may:
- 1) Authorize the continued use of such equipment.
  - 2) By mutual agreement with the Contractor, allow the Contractor to purchase equipment for an amount not to exceed the residual value of the equipment as of the date of termination or completion of this Agreement.
  - 3) Request delivery of the equipment to the Energy Commission, with any costs incurred for such return to be borne by the Energy Commission.

### 8. **INTELLECTUAL PROPERTY RIGHTS OF PARTIES**

If intellectual property will be used or developed under this Agreement, the following provisions apply.

- A. Exhibit E, Attachment 5 contains the intellectual property rights between the Energy Commission and the U.S. Department of Energy (DOE), which has funded this Agreement.

- B. The Contractor shall obtain the same rights for the Energy Commission and DOE from all ~~subrecipients-subcontractors~~ and others who produce copyrightable material, data, works of art, works of fine art or subject inventions under this Agreement. The Contractor shall incorporate these paragraphs, modified appropriately, into its agreements with ~~subcontractorssubrecipients~~. No ~~subcontractsubaward~~ shall be entered into without these rights being assured to the Energy Commission and DOE from the ~~subcontractorssubrecipient~~.

- C. Rights to DOE

- 1) The Contractor grants to DOE for all copyrightable work a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the work for Federal purposes, and to authorize others to do so.
- 2) The Contractor acknowledges and agrees that DOE has the right to:
  - (a) Obtain, reproduce, publish or otherwise use the data first produced under the Agreement; and
  - (b) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

- D. Rights to Energy Commission

- 1) The Contractor grants to the Energy Commission for all copyrightable material, work of art and original work of authorship first produced,

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composed or authored in the performance of this Agreement a royalty-free, paid-up, non-exclusive, irrevocable, nontransferable, worldwide license to produce, translate, publish, use, dispose of, reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art or fine art, and to authorize others to produce, translate, publish, use, dispose of, reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art or fine art.

- 2) The Contractor grants to the Energy Commission a no-cost, nonexclusive, nontransferable, irrevocable license to use or have practiced for or on behalf of the State of California for governmental purposes any subject invention(s) first produced in the performance of this Agreement.
- 3) The Contractor grants to the Energy Commission the no-cost use of any technical data first produced or specifically used in the performance of this Agreement.

- E. "Data" as used in this Agreement means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research or experimental, developmental or engineering work, or be usable or be used to define a design or process, or to support a premise or conclusion asserted in any deliverable document required by this Agreement. The data may be graphic or pictorial delineations in media, such as drawings or photographs, data or information, etc. It may be in machine form, such as punched cards, magnetic tape or computer printouts, or may be retained in computer memory.
- F. "Deliverable data" is that data which, under the terms of this Agreement, is required to be delivered to the Energy Commission and shall belong to the Energy Commission.
- G. "Proprietary data" is such data as the Contractor has identified in a satisfactory manner as being under Contractor's control prior to commencement of performance of this Agreement, and which Contractor has reasonably demonstrated as being of a proprietary nature either by reason of copyright, patent or trade secret doctrines in full force and effect at the time when performance of this Contract is commenced. The title to "proprietary data" shall remain with the Contractor throughout the term of this Agreement and thereafter. The extent of the Energy Commission access to, and the testimony available regarding, the proprietary data shall be limited to that reasonably necessary to demonstrate, in a scientific manner to the satisfaction of scientific persons, the validity of any premise, postulate or conclusion referred to or expressed in any deliverable for this Agreement.

- H. "Generated data" is that data, which a Contractor has collected, collated, recorded, deduced, read out or postulated for utilization in the performance of this Contract. Any electronic data processing program, model or software system developed or substantially modified by the Contractor in the performance of this Contract at the Energy Commission's expense, together with complete documentation thereof, shall be treated in the same manner as "generated data." "Generated data" shall be the property of the Energy Commission, unless and only to the extent that it is specifically provided otherwise in this Agreement.
- I. As to "generated data" which is reserved to Contractor by the express terms hereof, and as to any pre-existing or "proprietary data" which has been utilized to support any premise, postulate or conclusion referred to or expressed in any deliverable hereunder, Contractor shall preserve the same in a form which may be introduced as evidence in a court of law at Contractor's own expense for a period of not less than three years after receipt by the Energy Commission of the Final Report herein.
- J. Before the expiration of the three years, and before changing the form of or destroying any data, Contractor shall notify the Energy Commission of any contemplated action and the Energy Commission may, within thirty (30) days after notification, determine whether it desires the data to be preserved. If the Energy Commission so elects, the expense of further preserving data shall be paid for by the Energy Commission. Contractor agrees that the Energy Commission may at its own expense, have reasonable access to data throughout the time during which data is preserved. Contractor agrees to use its best efforts to furnish competent witnesses or to identify competent witnesses to testify in any court of law regarding data.

## **9. PUBLIC HEARINGS**

If public hearings on the scope of work are held during the period of the Contract, the Contractor will make available to testify the personnel assigned to this Agreement. The Energy Commission will reimburse the Contractor for compensation and travel of the personnel at the Contract rates for the testimony that the Energy Commission requests.

## **10. DISPUTES**

In the event of a Contract dispute or grievance between the Contractor and the Energy Commission, both parties shall follow the following procedure. The Contractor shall continue with the responsibilities under this contract during any dispute.

### **A. Commission Dispute Resolution**

The Contractor shall first discuss the problem informally with the Contract Manager. If the problem cannot be resolved at this stage, the Contractor

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must direct the grievance together with any evidence, in writing, to the Contracts Officer. The grievance must state the issues in the dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Contracts Officer and the Program Office Manager must make a determination on the problem within ten (10) working days after receipt of the written communication from the Contractor. The Contracts Officer shall respond in writing to the Contractor, indicating a decision and explanation for the decision. Should the Contractor disagree with the Contracts Officer's decision, the Contractor may appeal to the Executive Director.

The Contractor must prepare a letter indicating why the Contracts Officer's decision is unacceptable, attaching to it the Contractor's original statement of the dispute with supporting documents, along with a copy of the Contracts Officer's response. This letter shall be sent to the Energy Commission's Executive Director within ten (10) working days from receipt of the Contracts Officer's decision. The Executive Director or designee shall meet with the Contractor to review the issues raised. A written decision signed by the Executive Director or designee shall be returned to the Contractor within twenty (20) working days of receipt of the Contractor's letter. The Executive Director may inform the Energy Commission of the decision at an Energy Commission business meeting. Should the Contractor disagree with the Executive Director's decision, the Contractor may appeal to the Energy Commission at a regularly scheduled business meeting. The Contractor will be provided with the current procedures for placing the appeal on an Energy Commission Business Meeting Agenda.

### B. Binding Arbitration by Mutual Agreement

Should the Energy Commission's Dispute Resolution procedure above fail to resolve a contract dispute or grievance to the satisfaction of the Contractor, the Contractor and Energy Commission mutually may elect to have the dispute or grievance resolved through binding arbitration. If one party does not agree, the matter shall not be submitted to arbitration.

The arbitration proceeding shall take place in Sacramento County, California, and shall be governed by the commercial arbitration rules of the American Arbitration Association (AAA) in effect on the date the arbitration is initiated. The dispute or grievance shall be resolved by one (1) arbitrator who is an expert in the particular field of the dispute or grievance. The arbitrator shall be selected in accordance with the aforementioned commercial arbitration rules.

If arbitration is mutually decided by the parties, arbitration is in lieu of any court action and the decision rendered by the arbitrator shall be final (not appealable to a court through the civil process). However, judgment may be entered upon the arbitrator's decision and is enforceable in accordance with the applicable law in any court having jurisdiction over this



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Agreement. The demand for arbitration shall be made no later six (6) months after the date of the contract's termination, despite when the dispute or grievance arose, and despite the applicable statute of limitations for a suit based on the dispute or grievance. If the parties do not mutually agree to arbitration, the parties agree that the sole forum to resolve a dispute is state court.

The cost of arbitration shall be borne by the parties as follows:

- 1) The AAA's administrative fees shall be borne equally by the parties;
- 2) The expense of a stenographer shall be borne by the party requesting a stenographic record;
- 3) Witness expenses for either side shall be paid by the party producing the witness;
- 4) Each party shall bear the cost of its own travel expenses;
- 5) All other expenses shall be borne equally by the parties, unless the arbitrator apportions or assesses the expenses otherwise as part of his or her award.

At the option of the parties, any or all of these arbitration costs may be deducted from any balance of Contract funds. Both parties must agree, in writing, to utilize contract funds to pay for arbitration costs.

### 11. **TERMINATION**

The parties agree that because the Energy Commission is a state entity, it must be able to immediately terminate the Agreement upon the default of Contractors, and to proceed with the work required under the Agreement in any manner the Energy Commission deems proper. The Contractor specifically acknowledges that the Energy Commission's unilateral termination of the Agreement under the terms set forth below is an essential term of the Agreement, without which the Energy Commission would not enter into the Agreement. The Contractor further agrees that upon any of the events triggering the unilateral termination the Agreement by the Energy Commission, the Energy Commission has the sole right to terminate the Agreement, and it would constitute bad faith of the Contractor to interfere with the immediate termination of the Agreement by the Energy Commission.

This Agreement may be terminated for any reason set forth below.

#### A. With Cause

In the event of any breach by the Contractor of the conditions set forth in this Agreement, the Energy Commission may, without prejudice to any of its legal remedies, terminate this Agreement for cause upon five (5) days written notice to the Contractor. In such event, the Energy Commission shall pay the Contractor only the reasonable value of the services rendered by the Contractor prior to termination, as may be agreed upon by

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the parties or determined by a court of law, but not in excess of the contract maximum payable. "Cause" includes without limitation:

- 1) Failure to perform or breach of any of the terms or covenants at the time and in the manner provided in this Agreement; or
- 2) Inability of the Contractor to pay its debts as they become due and/or the Contractor's default of an obligation that impacts its ability to perform under this Agreement; or
- 3) Determination by the Energy Commission or the Executive Director after notice and hearing that the Contractor or any agent or representative of the Contractor offered or gave gratuities to any officer or employee of the Energy Commission, with a view toward securing an Agreement or securing favorable treatment with respect to awarding or amending or making a determination with respect to performance of the Agreement; or
- 4) Significant change in Commission policy such that the work or product being funded would not be supported by the Energy Commission; or
- 5) Reorganization to a business entity unsatisfactory to the Energy Commission; or
- 6) The retention or hiring of subawardees/vendors, or the replacement or addition of personnel that fail to perform to the standards and requirements of this Agreement.

### B. Without Cause

The Energy Commission may, at its option, terminate this Agreement without cause in whole or in part, upon giving thirty (30) days advance notice in writing to the Contractor. In such event, the Contractor agrees to use all reasonable efforts to mitigate its expenses and obligations hereunder. Also, in such event, the Energy Commission shall pay the Contractor for all satisfactory services rendered and expenses incurred within 30 days after notice of termination which could not by reasonable efforts of the Contractor have been avoided, but not in excess of the maximum payable under this Agreement.

## 12. **ENFORCEABILITY**

The Contractor agrees that if it or one of its ~~subcontractors~~~~subawardees~~~~or vendors~~ fails to comply with all applicable Federal and State requirements governing the use of ARRA funds, the State may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds following an audit. This provision is in addition to all other remedies available to the State under all applicable Federal and State laws.



**13. WAIVER**

No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Contract shall be taken and construed as cumulative, meaning in addition to every other remedy provided therein or by law. The failure of the Energy Commission to enforce at any time any of the provisions of this Contract, or to require at any time performance by the Contractor of any of the provisions, shall in no way be construed to be a waiver of those provisions, nor in any way affect the validity of this Contract or any part of it or the right of the Energy Commission to thereafter enforce each and every such provision.

**14. CAPTIONS**

The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference and do not define, limit, or extend the scope or intent of the clauses.

**15. PRIOR DEALINGS, CUSTOM OR TRADE USAGE**

In no event shall any prior course of dealing, custom or trade usage modify, alter, or supplement any of these terms.

**16. NOTICE**

This clause applies to situations where notice is required to be given by this Agreement, or the parties are asserting their legal rights and remedies. This paragraph is not intended to apply to normal, daily communication between the parties related to progress of the work.

The parties to the contract must give legal notice using any of the following delivery methods: U.S. Mail, overnight mail, or personal delivery, providing evidence of receipt to the person identified in Exhibit F of this Agreement for legal notices. Delivery by fax or e-mail is not considered legal notice for the purpose of this clause.

Notice shall be effective when received, unless a legal holiday for the State commences on the date of the attempted delivery. In this event, the effective date shall be postponed until the next business day.

**17. STOP WORK**

The Contract Officer may, at any time, by written notice to the Contractor, require the Contractor to stop all or any part of the work tasks in this Agreement. Stop Work Orders may be issued for reasons such as a project exceeding budget, standard of performance, out of scope work, delay in project schedule, misrepresentations and the like.

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- A. Compliance. Upon receipt of such stop work order, the Contractor shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.
- B. Equitable Adjustment. The Commission shall make an equitable adjustment based upon the Contractor's written request. The Contractor must make such adjustment request within thirty (30) days from the date of receipt of the stop work notice.
- C. Revoking a Stop Work Order. The Contractor shall resume the stopped work only upon receipt of written instructions from the Energy Commission's Contract Officer canceling the stop work order.

### 18. **INTERPRETATION OF TERMS**

This Agreement shall be conducted in accordance with the terms and conditions of the solicitation, if applicable. The Contractor's proposal is not attached, but is expressly incorporated by reference into this Agreement. In the event of conflict or inconsistency between the terms of this Agreement and the solicitation or proposal, this Agreement shall be considered controlling.

### 19. **AMENDMENTS**

- A. This Agreement may be amended to make changes, including without limitation: additional funds, additional time, additional or modified tasks, and additional or modified terms, pursuant to 20 California Code of Regulations 2566.
- B. The Contractor acknowledges that provisions included in this Agreement pursuant to Federal or State law, regulation, or policy are subject to change. The Contractor agrees to comply with any amendments that the Energy Commission makes to this agreement to comply with Federal or State law, regulation, or policy.
- C. Formal Amendments

Significant changes to this Agreement must be approved at an Energy Commission business meeting through a formal amendment. Significant changes include, but are not limited to:

- 1) Change of the Contractor;
- 2) Changes to Exhibit A that significantly modify the Agreement's purpose;
- 3) Changes to Exhibit A that extend the due dates beyond the term of the Agreement;
- 4) Changes to Exhibit B that increase the amount of the Agreement;
- 5) Changes to Exhibit B that increase rates or fees;

D. Informal Amendments

The Energy Commission's Contract Manager may approve changes to this Agreement that are not significant, including changes required to comply with Federal or State law, regulation, or policy. These changes shall be documented in a letter of agreement between the Energy Commission and the Contractor.

**20. CONFIDENTIALITY**

A. Information Considered Confidential

If applicable, all Contractor information considered confidential at the commencement of this Agreement is designated in the Attachment to this Exhibit.

B. Confidential Deliverables: Labeling and Submitting Confidential Information

Prior to the commencement of this Agreement, if applicable, the parties have identified in the Attachment to this Exhibit, specific Confidential Information to be provided as a deliverable. All such confidential deliverables shall be marked, by the Contractor, as "Confidential" on each page of the document containing the Confidential Information and presented in a sealed package to the Commission Contracts Officer. (Non-confidential deliverables are submitted to the Accounting Office.) All Confidential Information will be contained in the "confidential" volume: no Confidential Information will be in the "public" volume.

C. Submittal of Unanticipated Confidential Information as a Deliverable

The Contractor and the Energy Commission agree that during this Agreement, it is possible that the Contractor may develop additional data or information not originally anticipated as a confidential deliverable. In this case, Contractor shall follow the procedures for a request for designation of Confidential Information specified in 20 CCR 2505. The Energy Commission's Executive Director makes the determination of confidentiality. Such subsequent determinations may be added to the list of confidential deliverables in the Attachment to this Exhibit.

D. *Disclosure of Confidential Information*

Disclosure of Confidential Information by the Energy Commission may only be made pursuant to 20 CCR 2506 and 2507. All confidential data, records or deliverables that are legally disclosed by the Contractor or any other entity become public records and are no longer subject to the above confidentiality designation.

## 21. **PROPOSAL INTERPRETATION**

This project shall be conducted in accordance with the terms and conditions of Commission Request for Qualifications, number 600-09-601, titled, Energy Commission American Recovery and Investment Act: Measurement, Verification, Evaluation, and Reporting, Contractor's Statement of Qualifications dated , and this Agreement. The Contractor's Statement of Qualifications is not attached, but is expressly incorporated by reference into this Agreement. In the event of conflict or inconsistency between the terms of this Agreement and the Contractor's Statement of Qualifications, this Agreement shall be considered controlling.

## 22. **WORK AUTHORIZATIONS**

### A. Process

1. The Contract Manager, in conjunction with the Contractor shall prepare Work Authorizations (WA) directing the work the Contractor will provide using the format provided by the Contract Manager.
2. The WA shall be approved by the authorized individuals of the Contractor and the Energy Commission using the Energy Commission's internal review process. The WA shall be signed by the Contractor's authorized individual and Contract Manager. The Contract Manager shall sign last. The WA also may also be signed by Energy Commission staff serving as Project Manager for the individual WA.
3. The WA becomes effective when the Contract Manager signs the WA and the WA. No work shall begin until the WA is approved and signed by both parties. The only exception is for the preparation of the first draft Work Authorization requested by the Commission's Contract Manager.
4. The Contract Manager shall file each signed WA with the Commission Contract Officer before payment is approved for the WA.

### B. Content of WA

Each WA shall include:

1. Contract Number
2. WA Number
3. WA Title
4. Effective Date (date signed by both Contractor and Contract Manager, indicating Contractor may begin work)
5. End Date
6. Funding Source
7. Objective or goal of the WA
8. Detailed scope of work and tasks
9. What task the WA falls within in the Contract
10. Schedule/Due dates and Deliverables
11. Contact Information
12. Contractor and Subcontractor personnel who will perform the work
13. Identification of DVBE

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14. Detailed Budget for types of costs that are identified as allowable in Contract budget:
  - Total Budget for WA
  - Category Budget:
    - Labor amount, based on rates of person or job classification
    - Travel and per diem total amount, with details of trip (number of trips, to and from location, number of people).
    - Equipment, as allowed by Contract budget, with details of specific equipment for purchase and cost.
    - Other direct or miscellaneous costs, including rental charges/fees, with details of specific item, quantity, rate and cost.
  - Task Budget, allocating amount for each task
15. Other items as required by Contract Manager, as allowed by the Contract Budget.

### C. Work Authorization Budgets

Each WA shall contain both a category budget and a task budget:

1. Category Budget.

Contract Manager shall allocate a total budget to each WA. WA budgets are divided into categories:

  - Labor amount,
  - Travel and per diem
  - Equipment
  - Other direct or miscellaneous costs, including rental charges/fees, with details of specific item, quantity, rate and cost.

Within each category, specific budget items are estimates and Contractor may spend the category budget up to the maximum amounts allocated for each category in the WA. Contractor shall not exceed the budgeted amount for each category unless the WA is amended.
2. Task Budget.

Contract Manager shall allocate a budget for each task. For purposes of evaluating work progress, the WA budget shall include a cost estimate indicating the estimated labor hours and costs for each WA task. The estimated task amounts listed in the budget for each category are not spending caps for the tasks. Contractor may shift budget between tasks, spending more than the estimated amount for the task (up to the maximum amount of the WA budget), with Contract Manager written approval. Contractor may also shift hours or budget from one person to another (up to the maximum amount of the WA budget), with Contract Manager written approval.

### D. Payment.

Payment for services is based upon an approved category budget in each WA. Any costs or expenses incurred by the Contractor or any subcontractor that have not been identified in the WA shall be borne by the Contractor.

E. Costs.

The actual cost of an approved, completed WA shall not exceed the authorized amount of the WA budget. If, in the performance of the WA, the Contractor or Contract Manager determines that the total cost might exceed the WA budget amount, Contractor or Contract Manager shall immediately notify the other. Upon such notification, the Contract Manager may:

1. Amend the WA scope of work to accomplish the work within the budget; or
2. Amend the WA to augment the budget; or
3. Direct the Contractor to complete the work for the budgeted amount without changes to the scope of work;
4. Terminate the WA.

F. Amendments.

1. An amendment is required for the following changes, including but not limited to:
  - Changes to the scope of work (i.e. new or changed work)
  - Adding Funds
  - Extending the Term
  - Adding people to perform service under the WA
  - Exceeding the amount allocated to a specific category (i.e. labor, travel or other direct costs)
2. Amendments shall be approved and signed using the same process as the original WA.
3. Amendments must be made prior to the termination date of the original WA or as amended.

G. Changes without Amendment.

Contract Manager may make the following changes to the WA without an amendment upon written notification to Contractor:

1. Changes to deliverable due dates, as long as the due dates do not go beyond the end term of the WA.
2. Minor scope of work changes that only correct grammatical errors or reference mistakes.

H. Stop Work

The Energy Commission reserves the right to require the Contractor to stop or suspend work on any WA. The Contract Officer shall provide notice in writing to the Contractor of the date work is stopped or suspended. Costs incurred up to that date shall be reimbursed in accordance with the work authorization.

I. Termination of WA.

The Contract Manager, in consultation with the Contract Officer, may terminate the WA without cause with 30 days written notice to Contractor.

## J. Incorporated into Agreement.

Each WA shall be incorporated into this Agreement. However, it is understood and agreed by both parties that all of the terms and conditions of this Agreement shall remain in force with the inclusion of any such WA. A WA shall in no way constitute an independent Agreement, nor in any way amend or supersede any of the other provisions of this Agreement.

## 23. **CONFLICT OF INTEREST & SEPARATION OF DUTIES**

A. Contractor agrees to continuously review new and upcoming projects in which members of the Contractor team may be involved for potential conflicts of interest, or for insufficient separation of duties between the purposes of this Agreement and any other project funded by the Energy Commission under ARRA. For purposes of this Section 23, "conflict of interest" shall refer to both conflicts of interest as defined by applicable federal and state law and regulation, as well as any circumstance where there is insufficient separation of duties between those individuals or entities involved in the design or performance of any energy projects funded by the Energy Commission under ARRA and those individuals or entities involved in the development or implementation of monitoring, validation, evaluation or assessment of fiscal accountability measurements of those projects. Contractor shall inform the Contract Manager as soon as a question arises about whether an actual or potential conflict of interest may exist. The Contract Manager and Commission's Chief Counsel's Office shall determine what constitutes a potential conflict of interest. The Energy Commission reserves the right to redirect work and funding on a project if the Commission's Chief Counsel's Office determines that there is a potential conflict of interest.

B. The Contractor shall submit an economic interest statement (Fair Political Practices Commission's Form 700) from each employee or subcontractor whom the Energy Commission's Chief Counsel's Office, in consultation with the Contract Manager, determines is a consultant under the Political Reform Act and, thus, subject to the requirements and restrictions of the Act. Such determination will be based on the nature and duration of the work to be performed by the employee or subcontractor. The determination as to who is a consultant under the Political Reform Act shall be requested by the Contract Manager before work by the employee or subcontractor begins. Each employee and subcontractor determined to be a consultant under the Political Reform Act shall be subject to the same disclosure category or categories applicable to the Commission staff who perform the same nature and scope of work as the consultant.

B-C. Actual and potential conflicts of interest may be evaluated under all applicable laws, regulations and policies, including but not limited to 10 Code of Federal Regulations (CFR) Part 600 (DOE Financial Assistance Regulations), and the California Political Reform Act at Government Code Sections 87100 et seq..



**EXHIBIT E****FEDERAL PROVISIONS INCORPORATED BY REFERENCE, SPECIAL PROVISIONS GOVERNING WORK FUNDED UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009, AND GENERAL FEDERAL PROVISIONS**

~~For purposes of this Agreement, the term "Contractor" refers to the entity known as "subrecipient" under federal law. The term "vendor" refers to those entities defined as such by OMB Circular A-133 (see Subpart B, Sections .105 and .210). The term "subawardee" refers to any entity other than a vendor that receives funding from the Contractor to carry out or support any portion of this Agreement. The Contractor must include all of the provisions below in its agreements with subawardees. It must include in its agreements with vendors only the provisions below that reference vendors. This following language may also periodically refer to a "subawardee" or "vendor" as a "subcontractor".~~

**1. FEDERAL REGULATIONS/ GUIDELINES/ OMB CIRCULARS INCOPORATED BY REFERENCE**

The Office of Management and Budget (OMB) Circulars, Federal regulations, and guidelines checked below are incorporated as part of this Agreement. These Terms and Conditions and any Special Conditions take precedence over the circulars, regulations, and guidelines checked below. OMB Circulars may be accessed on the OMB web site at [www.whitehouse.gov/omb/circulars/index.html](http://www.whitehouse.gov/omb/circulars/index.html) or by calling the Office of Administration, Publications Office, at (202) 395-7332. Federal Regulations may be accessed at <http://ecfr.gpoaccess.gov>.

The Contractor must include in its awards the provisions below that apply to the particular organization concerned.

- ☒ Title 10 Code of Federal Regulations (CFR) Part 600: DOE Financial Assistance Regulations
- ☒ Title 48 Code of Federal Regulations (CFR), Ch. 1, Subpart 31.2: Contracts with Commercial Organizations (Supplemented by 48 CFR, Ch. 9, Subpart 931.2 for Department of Energy grants) (commercial firms and certain non-profit organizations)
- ☒ Title 10 Code of Federal Regulations (CFR) Part 420: State Energy Program
- ☒ State Energy Program Funding Opportunity Announcement DE-FOA-0000052, CDFA Number 81.041 (<https://www.fedconnect.net/FedConnect/>)
- ☒ OMB Circular A-102: Common Rule for Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments



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- ☒ OMB Circular A-110: Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (also applicable to private entities)
- ☒ OMB Circular A-87: Cost Principles for State, Local and Tribal Governments
- ☒ OMB Circular A-21: Cost Principles for Educational Institutions
- ☒ OMB Circular A-122: Cost Principles Applicable to Grants, Contracts, and Other Agreements with Non-Profit Organizations (non-profit organizations and individuals, except for those specifically exempted)
- ☒ OMB Circular A-133: Audits of States, Local Governments, and Non-Profit Organizations
- ☐ Other:
- ☐ None

## 2. **SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

### A. ARRA-FUNDED PROJECT

Funding for this Agreement has been provided through the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. 111-5, and is dependent on a Federal agreement (DE-EE0000221, DE-EE0000905) authorized by the State Energy Program, (CFDA Number 81.041) and the Energy Efficiency and Conservation Block Grant Program (CFDA Number 81.128). The Contractor and all of its ~~subawardees and vendors~~subcontractors are subject to audit by appropriate Federal and State of California (State) entities. The State has the right to cancel, terminate, or suspend this Agreement if the Contractor or any ~~subcontractorsubawardee or vendor~~ fails to comply with the reporting and operational requirements contained in this Agreement.

### B. SEGREGATION OF COSTS

The Contractor and, its ~~subcontractorsubawardees, and its vendors~~ must segregate the obligations and expenditures related to funding under ARRA. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from ARRA shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for ARRA projects.

### C. PROHIBITION ON USE OF FUNDS

None of the funds provided under this Agreement derived from ARRA may be used by the Contractor or any of its ~~subcontractorsubawardees or vendors~~ for any

casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

#### **D. ACCESS TO RECORDS**

With respect to each contract or grant awarded utilizing at least some of the funds appropriated or otherwise made available by ARRA, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General is authorized –

- 1) To examine any records of the Contractor, any of its ~~subcontractors~~~~subawardees or vendors~~, or any State or local agency administering such contract that pertain to, and involve transactions related to, the contract, subcontract, grant, or subgrant; and
- 2) To interview any officer or employee of the Contractor, ~~subcontractor~~~~subawardee, vendor~~, or agency regarding such transactions.

#### **E. PUBLICATION**

Information about this Agreement will be published on the Internet and linked to the website [www.recovery.gov](http://www.recovery.gov), maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

#### **F. PROTECTING STATE AND LOCAL GOVERNMENT AND CONTRACTOR WHISTLEBLOWERS**

The Contractor agrees that both it and its ~~subcontractors~~~~subawardees and vendors~~ shall comply with Section 1553 of ARRA, which prohibits all non-Federal employers, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of: (1) gross mismanagement of a contract relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds. The Contractor agrees that it and its ~~subcontractor~~~~subawardees and vendors~~ shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of ARRA.

The requirements of Section 1553 of ARRA are summarized below. They include, but are not limited to:

**Prohibition on Reprisals:** An employee of any non-Federal employer receiving covered funds under ARRA may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee believes is evidence of:

- Gross management of an agency contract or grant relating to covered funds;
- A gross waste of covered funds;
- A substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- An abuse of authority related to the implementation or use of covered funds; or
- A violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

**Agency Action:** Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

**Non-enforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration:** Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under ARRA shall post notice of the rights and remedies as required therein. (Refer to section 1553 of ARRA located at [www.recovery.gov](http://www.recovery.gov), for specific requirements of this section and prescribed language for the notices.)

## **G. FALSE CLAIMS ACT**

The Contractor shall promptly notify the State and refer to an appropriate Federal inspector general any credible evidence that a principal, employee, agent, contractor, ~~subcontractor~~~~subawardee~~, ~~vendor~~, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving ARRA funds.

## **H. INFORMATION IN SUPPORT OF ARRA REPORTING**

The Contractor may be required to submit backup documentation for expenditures of funds under ARRA including such items as timecards and invoices. The Contractor shall provide copies of backup documentation at the request of DOE's Contracting Officer or designee, or the Energy Commission's Contract Manager or designee.

## **I. AVAILABILITY OF FUNDS**

Funds appropriated under ARRA and obligated to this award are available for reimbursement of costs until April 30, 2012.

## **J. REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF ARRA**

- 1) This award requires the Contractor to complete projects or activities which are funded under ARRA and to report on use of ARRA funds provided through this award. Information from these reports will be made available to the public.
- 2) The reports are due monthly by the third of the following month. For example, the January progress report is due on February 3. The reports must be submitted in accordance with the Reporting section of Exhibit A of this Agreement.
- ~~3) The Contractor must maintain current registrations in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which it has an active award funded with ARRA funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.~~
- ~~4) The Contractor shall report the information described in section 1512(c) of ARRA, in addition to any information reasonably requested by the Energy~~

~~Commission or required by Federal law, regulation, or policy. Standard data elements and federal reporting instructions will be provided online at <http://www.FederalReporting.gov>. The Contractor will not register at FederalReporting.gov, but will provide the information to the Energy Commission in a manner specified by the Commission.~~

5)3) The Contractor must provide information including, but not limited to, the following:

**~~a) ARRA Section 1512 Report~~**

- ~~• Direct jobs created (i.e., new positions created and filled or unfilled positions that are filled) and jobs retained (i.e., previously existing filled positions that are retained as a result of ARRA funds). Only include jobs that are directly funded by ARRA funds. The number shall be expressed as "full-time equivalent" (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule.~~
- ~~• Description of jobs created. Provide a brief description of impact on the Contractor's workforce and include the types of jobs created and retained. Include time base (full-time or part-time) and duration (1 year, 1-2 years, 2-5 years, or more than 5 years).~~
- ~~• Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number.~~
- ~~• Central Contractor Registration (CCR) number.~~
- ~~• Award number.~~
- ~~• Name (legal name as registered in CCR or D&B).~~
- ~~• The Doing Business As (DBA) name as registered in CCR or D&B.~~
- ~~• Address (physical location as listed in the CCR).~~
- ~~• Congressional district (based on physical location address).~~
- ~~• Type of entity (this is the "Business Type" in the CCR).~~
- ~~• Amount awarded (total amount of the Commission agreement).~~
- ~~• Amount received (total cumulative amount of Commission agreement funds received as of the reporting period).~~
- ~~• Date of award (date the Commission agreement was signed).~~
- ~~• Award period (term of the Commission agreement).~~
- ~~• Place of performance (the physical location of primary place of performance, including street address, city, state, zip code+4, country, congressional district, state senate district, and state assembly district).~~
- ~~• Area of benefit (e.g., state, county, city, special district).~~
- ~~• Names and total compensation of five most highly compensated officers for the calendar year in which the agreement is awarded if,~~
- ~~• In the Contractor's preceding fiscal year, the Contractor received—  
—80 percent or more of its annual gross revenues from federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and~~

- ~~—\$25,000,000 or more in annual gross revenues from federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements~~
  - ~~\*—The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or section 6104 of the Internal Revenue Code of 1986.~~

- Vendor Data Elements (purchases \$25,000 or above)
  - Dun and Bradstreet Data Universal Numbering System DUNS Number (<http://www.dnb.com>) or name.
  - Zip code of Headquarters.
  - Description of the product and/or service provided by the vendor.
  - The amount invoiced from the vendor (aggregated) that will be paid with ARRA funds.

**~~b) U.S. Department of Energy SEP Progress Report~~**

- ~~• A comparison of the actual accomplishments with the goals and objectives established for the period and reasons why the established goals were not met.~~
- ~~• A discussion of what was accomplished under these goals during this reporting period, including major activities, significant results, major findings or conclusions, key outcomes or other achievements. This section should not contain any proprietary data or other information not subject to public release. If such information is important to reporting progress, do not include the information, but include a note in the report advising the reader to contact the Principal Investigator or the Project Director for further information.~~
- ~~• Cost Status. Show approved budget by budget period and actual costs incurred. Separate costs by project activities, administration, and evaluation.~~
- ~~• Schedule Status. List milestones, anticipated completion dates, and actual completion dates.~~
- ~~• Any changes in approach or aims, and reasons for change.~~
- ~~• Actual or anticipated problems or delays, and actions taken or planned to resolve them.~~
- ~~• Any absence or changes of key personnel or changes in consortium/teaming arrangement.~~
- ~~• A description of any product produced or technology transfer activities accomplished during this reporting period, such as:
 
  - ~~\*—Publications (list journal name, volume, issue); conference papers; or other public releases of results.~~
  - ~~\*—Web site or other Internet sites that reflect the results of this project.~~
  - ~~\*—Networks or collaborations fostered.~~
  - ~~\*—Technologies/techniques.~~
  - ~~\*—Inventions/patent applications.~~~~

- ~~Other products, such as data or databases, physical collections, audio or video, software or netware, models, educational aid or curricula, instruments or equipment.~~
- ~~Performance Metrics~~
  - ~~Energy saved (kWh, therms, gallons, Btu, etc.).~~
  - ~~Renewable energy installed capacity and generated.~~
  - ~~GHG emissions reduced (tons) (CO2 equivalents) (methane, carbon, sulfur dioxide, nitrogen oxide, carbon monoxide).~~
  - ~~Energy cost savings.~~
  - ~~Funds leveraged.~~
- ~~Project type metrics. The key metrics to be reported will vary by project type. See Exhibit E, Attachment 7, Project Type Metrics.~~

#### K. NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS — SENSE OF CONGRESS

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

#### L. REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS) — SECTION 1605 OF ARRA

The Contractor agrees that in accordance with ARRA, Section 1605, neither the Contractor nor its ~~subcontractors, subawardees or vendors~~ will use ARRA funds for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with United States obligations under international agreements. The Contractor understands that this requirement may only be waived by the applicable Federal agency in limited situations as set out in ARRA, Section 1605.

##### 1) Definitions. As used in this award term and condition—

- a) Manufactured good means a good brought to the construction site for incorporation into the building or work that has been—
  - (i) Processed into a specific form and shape; or
  - (ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.
- b) Public building and public work means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may



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include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

- c) Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

### 2) Domestic preference.

- a) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111—5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this section and condition.
- b) This requirement does not apply to the material listed by the Federal Government as follows:
  - None
- c) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this section and condition if the Federal Government determines that—
  - (i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;
  - (ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
  - (iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

### 3) Request for determination of inapplicability of Section 1605 of the Recovery Act.

- a) (i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including—
  - (A) A description of the foreign and domestic iron, steel, and/or manufactured goods;
  - (B) Unit of measure;
  - (C) Quantity;



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- (D) Cost;
  - (E) Time of delivery or availability;
  - (F) Location of the project;
  - (G) Name and address of the proposed supplier; and
  - (H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this section.
- (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.
- (iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.
- (iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.
- (a) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).
- (b) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.
- b) Data. To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

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Foreign and Domestic Items Cost Comparison  
Description      Unit of measure      Quantity      Cost  
(dollars)\*

Item 1:

Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____

Item 2:

Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[\*Include all delivery costs to the construction site.]

### M. WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF ARRA

In accordance with ARRA Section 1606, the Contractor assures that it and its ~~subcontractors~~~~subawardees and vendors~~ shall fully comply with said Section and notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, all laborers and mechanics employed by contractors and ~~subcontractors~~~~Subawardees or vendors~~ on projects funded directly by or assisted in whole or in part by and through the Federal government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act). It is understood that the Secretary of Labor has the authority and functions set forth in Reorganization Plan Numbered 14 or 1950 (64 Stat. 1267; 5 U.S.C. App.) and Section 3145 of Title 40, United States Code.

1) Section 1606 of ARRA requires that all laborers and mechanics employed by contractors and ~~subcontractors~~~~Subawardees or vendors~~ on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under ARRA shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant

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covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

- 2) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

The Contractor will complete and certify by signature on Attachment 6 of this Agreement its commitment to comply with 29 CFR 5.5, and return it to the Energy Commission's Contracts Officer.

### **N. ARRA TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS**

- 1) To maximize the transparency and accountability of funds authorized under ARRA as required by Congress and in accordance with 2 CFR 215.21 "Uniform Administrative Requirements for Grants and Agreements" and OMB Circular A-102 Common Rules provisions, the Contractor agrees to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A-102 is available at <http://www.whitehouse.gov/omb/circulars/a102/a102.html>.
- 2) If the Contractor is covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," the Contractor agrees to separately identify the expenditures for Federal awards under ARRA on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. OMB Circular A-133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for Federal awards made under ARRA separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.
- 3) The Contractor agrees to separately identify to each ~~subcontractor~~~~subawardee and vendor~~, and document at the time of ~~subcontract~~~~subaward~~ and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of ARRA funds. When the Contractor awards ARRA funds for an existing program, the information furnished to ~~subcontractor~~~~subawardees and vendors~~ shall distinguish the ~~subcontract~~~~subawards~~ of incremental ARRA funds from regular ~~subcontract~~~~subawards~~ under the existing program.
- 4) The Contractor agrees to require its ~~subcontractor~~~~subawardees and vendors~~ to include on their SEFA information to specifically identify ARRA funding similar to the requirements for the recipient SEFA described above. This information is

needed to allow the recipient to properly monitor ~~subcontractors~~subawardee and ~~vendor~~ expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

**~~O. ADVANCED UNDERSTANDING CONCERNING PUBLICLY FINANCED ENERGY IMPROVEMENT PROGRAMS (FOR MUNICIPAL FINANCING PROJECTS ONLY):~~**

~~The parties recognize that the Contractor may use funds under this award for Property Assessed Clean Energy (PACE) loans, Sustainable Energy Municipal Financing, Clean Energy Assessment Districts, Energy Loan Tax Assessment Programs (ELTAPS), or any other form or derivation of Special Taxing District whereby taxing entities collect payments through increased tax assessments for energy efficiency and renewable energy building improvements made by their constituents. The Department of Energy (DOE) intends to publish "Best Practices" or other guidelines pertaining to the use of funds made available to the recipient under this award pertaining to the programs identified herein. By accepting this award, the Contractor agrees to incorporate, to the maximum extent practicable, those Best Practices and other guidelines into any such program(s) within a reasonable time after notification by DOE that the Best Practices or guidelines have been made available. The Contractor also agrees, by its acceptance of this award, to require its subawardees and vendors to incorporate to the maximum extent practicable the best practices and other guideline into any such program used by the subawardee or vendor.~~

**~~P. STATE ARRA GUIDELINES FOR STATE ENERGY PROGRAM~~**

~~The Commission's *Guidelines for the State Energy Program*, dated September 30, 2009, (publication number CEC 150-2009-004-F) are hereby incorporated by reference and made a part of this Agreement. The Contractor warrants that it has read and understands the Guidelines and acknowledges that requirements specified therein apply to the Contractor and the funding provided under this Agreement. The Contractor acknowledges that the Guidelines are subject to change pursuant to Public Resources Code Section 25462 and that any changes made to the Guidelines shall apply to the Contractor and the funding provided under this Agreement.~~

**3. ADDITIONAL FEDERAL PROVISIONS**

**A. SITE VISITS**

The Energy Commission, the Federal awarding agency, and/or their designees have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. The Contractor must provide and must require ~~subcontractors~~subawardees to provide reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations

must be performed in a manner that does not unduly interfere with or delay the work.

## **B. NON-DISCRIMINATION CLAUSE**

This award is subject to the provisions of 10 Code of Federal Regulations (CFR) 1040.1 *et seq.*, Nondiscrimination in Federally Assisted Programs.

The Contractor will complete and certify by signature on the DOE Form 1600.5, U.S. DOE "Assurance of Compliance," (Exhibit E, Attachment 1 of this Agreement) its commitment to comply with this law and return it to the Energy Commission Contracts Officer.

## **C. CERTIFICATIONS REGARDING LOBBYING; AND DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; ~~AND DRUG FREE WORKPLACE REQUIREMENTS~~**

This award is subject to the provisions of 10 CFR Part 601, 2 CFR Part 180, 2 CFR Part 901, 10 CFR Part 606, and 10 CFR Part 607.

The Contractor and its subcontractors will complete and certify by signature on the Form "Certifications Regarding Lobbying; and Debarment, Suspension and Other Responsibility Matters; ~~and Drug Free Workplace Requirements~~" (Exhibit E, Attachment 2 of this Agreement) its commitment to comply with these requirements and return it to the Energy Commission's Contracts Officer.

## **D. LOBBYING RESTRICTIONSACTIVITIES**

The Contractor agrees that none of the funds obligated under this agreement shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

The Contractor and its subcontractors will disclose lobbying activities by completing and signing the Standard Form LLL (Exhibit E, Attachment 3 of this Agreement) and return it to the Energy Commission's Contracts Officer.

## **E. NATIONAL POLICY ASSURANCES**

The Contractor agrees to adhere to and include in all ~~subcontracts-subawards~~ the requirements set forth in the attached "National Policy Assurances" (Exhibit E, Attachment 4 of this Agreement). Terms are self-deleting to the extent they do not apply to a particular type of activity or award.

## **~~F. PUBLICATIONS~~**

~~1) The Contractor is encouraged to publish or otherwise make publicly available the results of the work conducted under this Agreement.~~

- 2) ~~An acknowledgment of Energy Commission and Federal support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:~~

~~*Acknowledgment.* "This material is based upon work supported by the California Energy Commission and the U.S. Department of Energy [add name(s) of other agencies, if applicable] under Award Number(s) [enter the award number(s)]."~~

~~*Disclaimer.* "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the California Energy Commission, the United States Government, nor any agency thereof, nor any employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the California Energy Commission, the United States Government, or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the California Energy Commission, the United States Government, or any agency thereof."~~

#### **G.F. FEDERAL INTELLECTUAL PROPERTY PROVISIONS**

- 1) The Federal intellectual property provisions applicable to this award are provided in Exhibit E, Attachment 5 to this award.
- 2) Questions regarding intellectual property matters should be referred to the DOE Award Administrator and the Patent Counsel designated as the service provider for the DOE office that issued the award. The IP Service Providers List is found at [http://www.gc.doe.gov/documents/Intellectual\\_Property\\_\(IP\)\\_Service\\_Providers\\_for\\_Acquisition.pdf](http://www.gc.doe.gov/documents/Intellectual_Property_(IP)_Service_Providers_for_Acquisition.pdf).

#### **H. PRESERVATION OF OPEN COMPETITION AND GOVERNMENT NEUTRALITY TOWARDS CONTRACTORS' LABOR RELATIONS ON FEDERALLY FUNDED CONSTRUCTION PROJECTS**

~~Unless in conflict with State or local laws, the Contractor must ensure that bid specifications, project agreement, or other controlling documents in construction contracts awarded pursuant to this Agreement, or pursuant to a subaward to this Agreement, do not:~~

- 1) ~~Require or prohibit bidders, offerors, contractors, or Subawardees or vendors to enter into or adhere to agreements with one or more labor organizations, on the same or other related construction project(s); or~~
- 2) ~~Otherwise discriminate against bidders, offerors, contractors, or Subawardees or vendors for becoming or refusing to become or remain signatories or~~



~~otherwise to adhere to agreements with one or more labor organizations, on the same or other related construction project(s).~~

~~3) The term "construction contract" as used in this provision means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.~~

~~4)1) Nothing in this provision prohibits bidders, offerors, contractors, or Subawardees or vendors from voluntarily entering into agreements with labor organizations.~~

#### **I.G. DECONTAMINATION AND/OR DECOMMISSIONING (D&D) COSTS**

Notwithstanding any other provisions of this Agreement, the Government shall not be responsible for or have any obligation to the Contractor or its subawardees for (i) Decontamination and/or Decommissioning (D&D) of any of the Contractor's or subawardee's facilities, or (ii) any costs which may be incurred by the Contractor or its subawardees in connection with the D & D of any of its facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of this agreement.

#### **J.H. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE**

The Contractor is restricted from taking any action using Federal funds for projects under this Agreement that will have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE providing a final NEPA determination regarding these projects.

If the Contractor moves forward with activities that are not authorized for Federal funding by the DOE Contracting Officer in advance of the final NEPA determination, it is doing so at risk of not receiving Federal funding and such costs may not be recognized as allowable cost share.

#### **K.I. NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS – SENSE OF CONGRESS**

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

#### **L. HISTORIC PRESERVATION**

~~**M.**~~

~~**N.** Prior to the expenditure of federal funds to alter any structure or site, the Contractor is required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA), consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. In order to fulfill the requirements of Section 106, the Contractor must contact the State Historic Preservation Officer (SHPO), and, if~~



~~applicable, the Tribal Historic Preservation Officer (THPO), to coordinate the Section 106 review outlined in 36 CFR Part 800. SHPO contact information is available at the following link: <http://www.ncshpo.org/find/index.htm>. THPO contact information is available at the following link: <http://www.nathpo.org/map.html>.~~

~~Q.—~~

~~P. Section 110(k) of the NHPA applies to DOE funded activities. The Contractor shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.~~

~~Q.—~~

~~R. The Contractor should be aware that the DOE Contracting Officer will consider the Contractor in compliance with Section 106 of the NHPA only after the Contractor has submitted adequate background documentation and the SHPO/THPO has provided written concurrence that it does not object to its Section 106 finding or determination. The Contractor shall provide a copy of this concurrence to the Commission and the Contracting Officer.~~

~~S.—~~

~~T. If the Contractor's project involves alteration of any structure or site, the Commission's Contracts Office will provide further guidance on the Section 106 process.~~

## ~~U.U.~~ **FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS**

The Contractor and its subcontractors must obtain any required permits and comply with all applicable federal, state, and municipal laws, codes, and regulations for work performed under this Agreement.

## ~~V.~~ **STATEMENT OF FEDERAL STEWARDSHIP**

~~DOE will exercise normal federal stewardship in overseeing the project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished.~~

## ~~W.K.~~ **RESOLUTION OF CONFLICTING CONDITIONS**

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this award must be referred to the DOE Award Administrator for guidance.

**EXHIBIT E  
ATTACHMENT 1**

**ASSURANCE OF COMPLIANCE**

DOE F 1600.5  
(06-94)  
All Other Editions are  
Obsolete

**U.S. Department of Energy  
Assurance of Compliance**

OMB Control No.  
1910-0400

**Nondiscrimination in Federally Assisted Programs**

**OMB Burden Disclosure Statement**

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Office of Information Resources Management Policy, Plans, and Oversight, Records Management Division, HR-422 - GTN, Paperwork Reduction Project (1900-0400), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585; and to the Office of Management and Budget (OMB), Paperwork Reduction Project (1900-0400), Washington, DC 20503.

(Hereinafter called the "Applicant")

HEREBY AGREES to comply with Title VI of the Civil Rights Act of 1964 (Pub. L.88-352), Section 16 of the Federal Energy Administration Act of 1974 (Pub.L.93-275), Section 401 of the Energy Reorganization Act of 1974 (Pub.L.93-438), Title IX of the Education Amendments of 1972, as amended (Pub.L.92-318, Pub.L.93-568, and Pub.L.94-482), Section 504 of the Rehabilitation Act of 1973 (Pub.L.93-112), the Age Discrimination Act of 1975 (Pub.L.94-135), Title VIII of the Civil Rights Act of 1968 (Pub.L.90-284), the Department of Energy Organization Act of 1977 (Pub.L.95-91), and the Energy Conservation and Production Act of 1976, as amended (Pub.L.94-385) and Title 10, Code of Federal Regulations, Part 1040. In accordance with the above laws and regulations issued pursuant thereto, the Applicant agrees to assure that no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity in which the Applicant receives Federal assistance from the Department of Energy.

**Applicability and Period of Obligation**

In the case of any service, financial aid, covered employment, equipment, property, or structure provided, leased, or improved with Federal assistance extended to the Applicant by the Department of Energy, this assurance obligates the Applicant for the period during which Federal assistance is extended. In the case of any transfer of such service, financial aid, equipment, property, or structure, this assurance obligates the transferee for the period during which Federal assistance is extended. If any personal property is so provided, this assurance obligates the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Applicant for the period during which the Federal assistance is extended to the Applicant by the Department of Energy.

**Employment Practices**

Where a primary objective of the Federal assistance is to provide employment or where the Applicant's employment practices affect the delivery of services in programs or activities resulting from Federal assistance extended by the Department, the Applicant agrees not to discriminate on the ground of race, color, national origin, sex, age, or disability, in its employment practices. Such employment practices may

include, but are not limited to, recruitment advertising, hiring, layoff or termination, promotion, demotion, transfer, rates of pay, training and participation in upward mobility programs; or other forms of compensation and use of facilities.

### **Subrecipient Assurance**

The Applicant shall require any individual, organization, or other entity with whom it subcontracts, subgrants, or subleases for the purpose of providing any service, financial aid, equipment, property, or structure to comply with laws cited above. To this end, the subrecipient shall be required to sign a written assurance form, however, the obligation of both recipient and subrecipient to ensure compliance is not relieved by the collection or submission of written assurance forms.

### **Data Collection and Access to Records**

The Applicant agrees to compile and maintain information pertaining to programs or activities developed as a result of the Applicant's receipt of Federal assistance from the Department of Energy. Such information shall include, but is not limited to, the following: (1) the manner in which services are or will be provided and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination; (2) the population eligible to be served by race, color, national origin, sex, age, and disability; (3) data regarding covered employment including use or planned use of bilingual public contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English; (4) the location of existing or proposed facilities connected with the program and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any person on the basis of prohibited discrimination; (5) the present or proposed membership by race, color, national origin, sex, age, and disability, in any planning or advisory body which is an integral part of the program; and (6) any additional written data determined by the Department of Energy to be relevant to its obligation to assure compliance by recipients with laws cited in the first paragraph of this assurance.

The Applicant agrees to submit requested data to the Department of Energy regarding programs and activities developed by the Applicant from the use of Federal assistance funds extended by the Department of Energy, Facilities of the Applicant (including the physical plants, building, or other structures) and all records, books, accounts, and other sources of information pertinent to the Applicant's compliance with the civil rights laws shall be made available for inspection during normal business hours on request of an officer or employee of the Department of Energy specifically authorized to make such inspections. Instructions in this regard will be provided by the Director, Office of Civil Rights, U.S. Department of Energy.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (excluding procurement contracts), property, discounts or other Federal assistance extended after the date hereto, to the Applicants by the Department of Energy, including installment payments on account after such data of application for Federal assistance which are approved before such date. The Applicant recognizes and agrees that such Federal assistance will be extended in reliance upon the representation and agreements made in this assurance and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, the successors, transferees, and assignees, as well as the person(s) whose signature appears below and who are authorized to sign this assurance on behalf of the Applicant.

## ATTACHMENT 6

DOE F 1600.5  
(06-94)  
All Other Editions are Obsolete

OMB Control No.  
1910-0400

### Applicant Certification

The Applicant certifies that it has complied, or that, within 90 days of the date of the grant, it will comply with all applicable requirements of 10 C.F.R. § 1040.5 (a copy will be furnished to the Applicant upon written request to DOE).

Designated Responsible Employee

_____	(    )    - _____
Name and Title (Printed to Typed)	Telephone Number

_____	_____
Signature	Date

---

_____	(    )    - _____
Applicant's Name	Telephone Number

_____	_____
Address:	Date

\_\_\_\_\_

Agency Use Only

ATTACHMENT 6  
EXHIBIT E  
ATTACHMENT 2

**CERTIFICATIONS REGARDING LOBBYING AND;  
DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS;  
AND DRUG-FREE WORKPLACE REQUIREMENTS**

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***CERTIFICATIONS REGARDING LOBBYING;  
DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS;  
AND DRUG FREE WORKPLACE REQUIREMENTS***

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 10 CFR Part 601 "New Restrictions on Lobbying," 2 CFR Part 180 "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," and 2 CFR Part 901 "Nonprocurement Debarment and Suspension." ~~40 CFR Part 606 "Governmentwide Debarment and Suspension (Nonprocurement) and 10 CFR Part 607 "Governmentwide Requirements for Drug-Free Workplace (Grants)."~~ The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Energy determines to award the covered transaction, grant, or cooperative agreement.

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**1. LOBBYING**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**2. ADDITIONAL LOBBYING REPRESENTATION**

Applicant organizations which are described in section 501(c)(4) of the Internal Revenue Code of 1986 and engage in lobbying activities after December 31, 1995, are not eligible for the receipt of Federal funds constituting an award, grant, or loan.

As set forth in section 3 of the Lobbying Disclosure Act of 1995 as amended, (2 U.S.C. 1602), lobbying activities are defined broadly to include, among other things, contacts on behalf of an organization with specified employees of the Executive Branch and Congress with regard to Federal legislative, regulatory, and program administrative matters.

Check the appropriate block:

The applicant is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986? ☐ Yes ☐ No

If you checked "Yes" above, check the appropriate block:

The applicant represents that after December 31, 1995 it ☐ has ☐ has not engaged in any lobbying activities as defined in the Lobbying Disclosure Act of 1995, as amended.

---

**3. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery; falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**~~4. DRUG-FREE WORKPLACE~~**

~~This certification is required by the Drug-Free Workplace Act of 1988 (Pub.L. 100-690, Title V, Subtitle D) and is implemented through additions to the Debarment and Suspension regulations, published in the Federal Register on January 31, 1989, and May 25, 1990.~~

**~~ALTERNATE I (GRANTEES OTHER THAN INDIVIDUALS)~~**

~~(1) The grantee certifies that it will or will continue to provide a drug-free workplace by:~~

~~(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;~~

~~(b) Establishing an ongoing drug-free awareness program to inform employees about:~~

~~(1) The dangers of drug abuse in the workplace;~~

~~(2) The grantee's policy of maintaining a drug-free workplace;~~

~~(3) Any available drug counseling, rehabilitation, and employee assistance programs; and~~

~~(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;~~

~~(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);~~

~~(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:~~

~~(1) Abide by the terms of the statement; and~~

~~(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace not later than five calendar days after such conviction;~~

~~(e) Notifying the agency, in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;~~

~~(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:~~

~~(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or~~

~~(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;~~



## ATTACHMENT 6

~~(g) Making a good faith effort to continue to maintain a drug free workplace through implementation of paragraphs (a),(b),(c),(d),(e), and (f).~~

~~(2) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:~~

~~Place of Performance: (Street address, city, county, state, zip code)~~

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~

☐ ~~Check if there are workplaces on file that are not identified here.~~

### **~~ALTERNATE II (GRANTEES WHO ARE INDIVIDUALS)~~**

~~(1) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant.~~

~~(2) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.~~

### **4.5. SIGNATURE**

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

Name of Applicant: \_\_\_\_\_

Printed Name and Title of  
Authorized Representative: \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

**EXHIBIT E  
ATTACHMENT 3**

**INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

## ATTACHMENT 6

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

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According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

**EXHIBIT E  
ATTACHMENT 4**

**NATIONAL POLICY ASSURANCES**

**NATIONAL POLICY ASSURANCES TO BE INCORPORATED AS AWARD TERMS (August 2008)**

To the extent that a term does not apply to a particular type of activity or award, it is self-deleting.

**Nondiscrimination Policies**

By signing this agreement or accepting funds under this agreement, the recipient assures that it will comply with applicable provisions of the following, national policies prohibiting discrimination:

- a. On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), as implemented by DOE regulations at 10 CFR part 1040.
- b. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), as implemented by DOE regulations at 10 CFR parts 1041 and 1042.
- c. On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90 and DOE at 10 CFR part 1040.
- d. On the basis of disability, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DOE regulations at 10 CFR part 1041.
- e. On the basis of race, color, national origin, religion, disability, familial status, and sex under Title VIII of the Civil Rights Act (42 U.S.C. 3601 et seq.) as implemented by the Department of Housing and Urban Development at 24 CFR part 100.
- f. On the basis of disability in the Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.) for the design, construction, and alteration of buildings and facilities financed with Federal funds.

**Environmental Policies**

By signing this agreement or accepting funds under this agreement, the recipient assures that it will:

- a. Comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401, et. seq.) and Clean Water Act (33 U.S.C. 1251, et. seq.), as implemented by Executive Order 11738 [3 CFR, 1971-1975 Comp., p. 799] and Environmental Protection Agency (EPA) rules at Subpart J of 40 CFR part 32.
- b. Identify to the awarding agency any impact this award may have on:
  1. The quality of the human environment, including wetlands, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et. seq.) and assist the agency to prepare Environmental Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) or limit the choice of reasonable alternatives until the agency provides written notification of compliance with NEPA, as implemented by DOE at 10 CFR part 1021.

**NATIONAL POLICY ASSURANCES TO BE INCORPORATED AS AWARD TERMS (August 2008)**

To the extent that a term does not apply to a particular type of activity or award, it is self-deleting.

2. Flood-prone areas, and provide any help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et. seq.), which require flood insurance, when available, for Federally assisted construction or acquisition in flood-prone areas, as implemented by DOE at 10 CFR part 1022.
3. Use of land and water resources of coastal zones, and provide any help the agency may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et. Seq.).
4. Coastal barriers along the Atlantic and Gulf coasts and Great Lakes' shores, and provide any help the agency may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501, et. seq.), concerning preservation of barrier resources.
5. Any existing or proposed component of the National Wild and Scenic Rivers system, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271, et seq.).
6. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C. 300h-3).
- c. Comply with applicable provisions of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), as implemented by the Department of Housing and Urban Development at 24 CFR part 35. The requirements concern lead-based paint in housing owned by the Federal Government or receiving Federal assistance).
- d. Comply with section 6002 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6962), and implementing regulations of the Environmental Protection Agency, 40 CFR Part 247, which require the purchase of recycled products by States or political subdivision of States.

**Live Organisms**

By signing this agreement or accepting funds under this agreement, the recipient assures that it will comply with applicable provisions of the following national policies concerning live organisms:

- a. For human research subjects, the recipient must protect the rights and welfare of individuals that participate as human subjects in research under this award in accordance with the Common Federal Policy for the Protection of Human Subjects (45 CFR part 46), as implemented by DOE at 10 CFR part 745.
- b. For animals and plants:
  1. The recipient must comply with applicable provisions of Department of Agriculture rules at 9 CFR parts 1-4 that implement the Laboratory Animal Welfare Act of 1966 (7 U.S.C. 2131-2156) and provide for humane transportation, handling, care, and treatment of animals used in research, experimentation, or testing under this award.
  2. The recipient must follow the guidelines in the National Academy of Sciences (NAS) Publication "Guide for the Care and Use of Laboratory Animals" (1996, which may be found currently at <http://www.nap.edu/readingroom/books/labrats/>) and comply with the Public Health Service Policy and Government principles Regarding the Care and use of animals (included as Appendix D to the

**NATIONAL POLICY ASSURANCES TO BE INCORPORATED AS AWARD TERMS (August 2008)**

To the extent that a term does not apply to a particular type of activity or award, it is self-deleting.

NAS Guide).

3. The recipient must immediately identify to the awarding agency any potential impact that the recipient finds this award may have on endangered species, as defined by the Endangered Species Act of 1973, as amended ("the Act," 16 U.S.C. 1531-1543), and implementing regulations of the Departments of the Interior (50 CFR parts 10-24) and Commerce (50 CFR parts 217-227). The recipient also must provide any help the awarding agency may need to comply with 16 U.S.C. 1536(a)(2). This is not in lieu of responsibilities the recipient has to comply with provisions of the Act that apply directly to it as a U.S. entity, independent of receiving this award.

**Debarment and Suspension**

The recipient agrees to comply with the requirements regarding debarment and suspension in Subpart C of 2 CFR parts 180 and 901.

**Drug-Free Workplace**

The recipient agrees to comply with the requirements in Subpart B of 10 CFR part 607, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

**Lobbying**

- a. The recipient assures that it will comply with the restrictions on lobbying in 31 U.S.C.1352, as implemented by DOE at 10 CFR part 601, and submit all disclosures required by that statute and regulation.
- b. The recipient, if it is a nonprofit organization described in section 501(c)(4) of title 26, United States Code (the Internal Revenue Code of 1968), may not engage in lobbying activities as defined in the Lobbying Disclosure Act of 1995 (2 U.S.C., Chapter 26). If the awarding agency determines that the recipient has engaged in lobbying activities, it will cease all payments to the recipient under this and other awards and terminate the awards unilaterally for material failure to comply with the award terms and conditions. By submitting an application and accepting funds under this agreement, the recipient assures that it is not an organization described in section 501(c)(4) that has engaged in any lobbying activities described in the Lobbying Disclosure Act of 1995 (2 U.S.C. 1611).
- c. The recipient must comply with the prohibition in 18 U.S.C. 1913 on the use of Federal funds, absent express Congressional authorization, to pay directly or indirectly for any service, advertisement or other written matter, telephone communication, or other device intended to influence at any time a Member of Congress or official.

**Officials not to benefit**

The recipient agrees to comply with the requirement that no member of Congress shall be admitted to any share or part of this agreement, or to any benefit arising from it, in accordance with 41 U.S.C. 22.



**Hatch Act**

The recipient agrees to comply with the Hatch Act (5 U.S.C. 1501-1508 and 7324-7328), as implemented by the Office of Personnel Management at 5 CFR part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.

**Native American Graves Protection and Repatriation Act of 1990**

The recipient, if it is an organization which controls or possesses Native American remains and associated funerary objects, must comply with the requirements of 43 CFR part 10, the Department of the Interior implementation of the Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C., chapter 32).

**Fly America Act**

The recipient agrees that it will comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118), commonly referred to as the "Fly America Act," and implementing regulations at 41 CFR 301-10.131 through 301-10.143. The law and regulations require air transport of people or property to, from, between or within a country other than the United States, the cost of which is supported under this award, to be performed by or under a cost-sharing arrangement with a U.S. flag carrier, if service is available.

**Use of United States-flag vessels**

- a. Pursuant to Pub. L. 664 (43 U.S.C. 1241(b)), at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds under this award, and which may be transported by ocean vessel, must be transported on privately owned United States-flag commercial vessels, if available.
- b. Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph 9.a of this section shall be furnished to both the awarding agency's administrator (through the recipient in the case of its contractor's bill-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

**Research Misconduct**

The recipient assures that it will comply with the government-wide policy on research misconduct issued by the Office of Science and Technology Policy (available in the Federal Register at 65 FR 76260, December 6, 2000, or on the Internet at [www.ostp.gov](http://www.ostp.gov)), as implemented by DOE at 10 CFR part 733 and 10 CFR 600.31.

**Requirements for an Institution of Higher Education Concerning Military recruiters and Reserve Officers Training Corps (ROTC)**

- a. As a condition for receiving funds under an award by the National Nuclear Security Administration of the Department of Energy, the recipient agrees that it is not an institution of higher education that has a policy or practice placing any of the restrictions specified in 10 U.S.C. 983 as implemented by 32 CFR part 216, on:

1. Maintenance, establishment, or operation of Senior ROTC units, or student participation in those units; or
  2. Military recruiters' access to campuses, students on campuses, or information about students.
- b. If the recipient is determined, using the procedures in 32 CFR part 216, to be such an institution of higher education during the period of performance of this award, the awarding agency:
1. Will cease all payments to the recipient of funds under this award and all other awards subject to the requirements in 32 CFR part 216; and
  2. May suspend or terminate those awards unilaterally for material failure to comply with the award terms and conditions.

### **National Historic Preservation**

- a. The recipient agrees to identify to the awarding agency any property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and to provide any help the awarding agency may need, with respect to this award, to comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f), as implemented by the Advisory Council on Historic Preservation regulations at 36 CFR part 800 and Executive Order 11593, "Identification and Protection of Historic Properties," [3 CFR, 1971-1975 Comp., p. 559].
- b. The recipient agrees to identify to the awarding agency the potential under this award for irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, and provide any help we may need, with respect to this award, to comply with the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1, et seq.).

### **Relocation and Real Property Acquisition**

The recipient assures that it will comply with 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.) and provides for fair and equitable treatment of persons displaced by Federally assisted programs or persons whose property is acquired as a result of such programs.

### **Confidentiality of patient records**

The recipient must keep confidential any records that it maintains of the identity, diagnosis, prognosis, or treatment of any patient in connection with any program or activity relating to substance abuse education, prevention, training, treatment, or rehabilitation that is assisted directly or indirectly under this award, in accordance with 42 U.S.C. 290dd-2.

### **Constitution Day**

The recipient must comply with Public Law 108-447, Div. J, Title I, Sec. 111 (36 U.S.C. 106 note), which requires each educational institution receiving Federal funds in a Federal fiscal year to hold an educational program on the United States Constitution on September 17<sup>th</sup> during that year for the students served by the educational institution.

### **Trafficking in Persons**

- a. Provisions applicable to a recipient that is a private entity:
  1. The recipient, its employees, subrecipients under this award, and subrecipients' employees may

not—

- i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
- ii. Procure a commercial sex act during the period of time that the award is in effect; or
- iii. Use forced labor in the performance of the award or subawards under the award.

2. The Federal awarding agency may unilaterally terminate this award, without penalty, if the recipient or a subrecipient that is a private entity –

- i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
- ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
  - A. Associated with performance under this award; or
  - B. Imputed to the recipient or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by the awarding agency at 2 CFR part 901.

b. Provision applicable to a recipient other than a private entity:

The Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

- 1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
- 2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
  - i. Associated with performance under this award; or
  - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by the awarding agency at 2 CFR part 901.

c. Provisions applicable to any recipient:

- 1. The recipient must inform the awarding agency immediately of any information it receives from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
- 2. The awarding agency's right to terminate unilaterally that is described in paragraph a.2 or b. of this section:
  - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
  - ii. Is in addition to all other remedies for noncompliance that are available to the awarding agency under this award.
- 3. The recipient must include the requirements of paragraph a.1 of this award term in any subaward it makes to a private entity.

d. Definitions. For purposes of this award term:

- 1. "Employee" means either:
  - i. An individual employed by the recipient or a subrecipient who is engaged in the performance of

- the project or program under this award; or
- ii. Another person engaged in the performance of the project or program under this award and not compensated by the recipient including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
  3. "Private entity":
    - i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
    - ii. Includes:
      - A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
      - B. A for-profit organization.
  4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

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### EXHIBIT E ATTACHMENT 5

#### FEDERAL INTELLECTUAL PROPERTY PROVISIONS

##### Intellectual Property Provisions (NRD-1003) Nonresearch and Development

##### Grant #DE-EE0000221

Under federal grant #DE-EE0000221, the following intellectual property provisions apply to the rights of the Energy Commission and the U.S. Department of Energy (DOE).

Nonprofit organizations are subject to the intellectual property requirements at 10 CFR 600.136(a), (c) and (d). All other organizations are subject to the intellectual property requirements at 10 CFR 600.136(a) and (c).

##### 10 CFR 600.136 Intangible property.

(a) The Energy Commission may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. DOE reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the work for Federal purposes, and to authorize others to do so.

(c) DOE has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) (1) In addition, in response to a Freedom of Information act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, the DOE shall request, and the Energy Commission shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the DOE obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect the costs incurred by the agency, the Energy Commission, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

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### **EXHIBIT E ATTACHMENT 6**

#### **~~DAVIS-BACON AND RELATED ACTS~~ ~~29 C.F.R. § 5.5 PROVISIONS~~**

Pursuant to 29 C.F.R. § 5.5, the following clauses apply to any contract in excess of \$2,000 that is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in 29 C.F.R. § 5.1:

##### ~~(1) Minimum wages.~~

~~(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3) ), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.~~

~~Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 4(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subawardees or vendors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.~~

~~(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:~~

## ATTACHMENT 6

~~(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and~~

~~(2) The classification is utilized in the area by the construction industry; and~~

~~(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.~~

~~(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.~~

~~(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.~~

~~(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.~~

~~(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.~~

~~(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.~~

~~(2) Withholding. The Energy Commission shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees,~~



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~~and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.~~

### ~~(3) Payrolls and basic records.~~

~~(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.~~

~~(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the U.S. Department of Energy (DOE) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to DOE. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subawardees or vendors. Contractors and subawardees or vendors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to DOE if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to DOE, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide~~

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~~addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).~~

~~(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:~~

~~(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;~~

~~(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;~~

~~(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.~~

~~(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance," required by paragraph (a)(3)(ii)(B) of this section.~~

~~(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.~~

~~(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Energy Commission or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.~~

### ~~(4) Apprentices and trainees--~~

~~(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable~~

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~~ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.~~

~~(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.~~

~~(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.~~

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~~(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.~~

~~(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subawardees or vendors to include these clauses in any lower tier subawards. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.~~

~~(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.~~

~~(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.~~

~~(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subawardees or vendors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.~~

~~(10) Certification of eligibility.~~

~~(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).~~

~~(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).~~

~~(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.~~

~~(b) Contract Work Hours and Safety Standards Act. The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.~~

~~(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.~~

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~~(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.~~

~~(3) Withholding for unpaid wages and liquidated damages. The Energy Commission shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.~~

~~(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subawardees or vendors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.~~

~~(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.~~

~~(The information collection, recordkeeping, and reporting requirements contained in the following paragraphs of this section were approved by the Office of Management and Budget:~~

Paragraph	OMB Control Number
(a)(1)(ii)(B)	1215-0140
(a)(1)(ii)(C)	1215-0140
(a)(1)(iv)	1215-0140

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(a)(3)(i)

1215-0140, 1215-0017

(a)(3)(ii)(A)

1215-0149

(e)

1215-0140, 1215-0017

### **SIGNATURE**

~~As the duly authorized representative of the applicant, I hereby certify that the applicant will  
comply with the requirements of 10 C.F.R. § 5.5.~~

~~Name of Applicant: \_\_\_\_\_~~

~~Printed Name and Title of  
Authorized Representative: \_\_\_\_\_~~

~~\_\_\_\_\_  
SIGNATURE~~

~~\_\_\_\_\_  
DATE~~

~~EXHIBIT F~~  
~~ATTACHMENT 7~~

~~PROJECT TYPE METRICS~~

~~**Metrics Activity:** The key metrics to be reported will vary by project type. The minimum information to be reported, by project activity type, is listed below. The project type metrics to be reported for this award are checked below.~~

~~☐ Building Codes and Standards~~

~~Name of new code adopted~~

~~Name of old code replaced~~

~~Number and percentage of new and existing buildings covered by new code~~

~~Other: \_\_\_\_\_~~

~~☐ Building Retrofits~~

~~Number of buildings retrofitted, by sector~~

~~Square footage of buildings retrofitted, by sector~~

~~Other: \_\_\_\_\_~~

~~☐ Clean Energy Policy~~

~~Number of alternative energy plans developed or improved~~

~~Number of renewable portfolio standards established or improved~~

~~Number of interconnection standards established or improved~~

~~Number of energy efficiency portfolio standards established or improved~~

~~Number of other policies developed or improved~~

~~Other: \_\_\_\_\_~~

~~☐ Building Energy Audits~~

~~Number of audits performed, by sector~~

~~Floor space audited, by sector~~

~~Auditor's projection of energy savings, by sector~~

~~Other: \_\_\_\_\_~~

~~☐ Energy Efficiency Rating and Labeling~~

~~Types of energy-consuming devices for which energy efficiency rating and labeling systems were endorsed by the State government, schools, or institutional procurement~~

~~Other: \_\_\_\_\_~~



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☐ ~~Government, School, Institutional Procurement~~

~~Number of units purchased, by type (e.g., vehicles, office equipment, HVAC equipment, streetlights, exit signs)~~

~~Other: \_\_\_\_\_~~

☐ ~~Industrial Process Efficiency (kwh equivalents)~~

~~Reduction in natural gas consumption (mmcf)~~

~~Reduction in fuel oil consumption (gallons)~~

~~Reduction in electricity consumption (MWh)~~

~~Other: \_\_\_\_\_~~

☐ ~~Industrial Retrofit Support~~

~~Number of buildings retrofitted, by industry type~~

~~Square footage of buildings retrofitted, by industry type~~

~~Other: \_\_\_\_\_~~

☐ ~~Loans and Grants~~

~~Number and monetary value of loans given~~

~~Number and monetary value of grants given~~

~~Other: \_\_\_\_\_~~

☐ ~~Renewable Energy Market Development~~

~~Number and size of solar energy systems installed~~

~~Number and size of wind energy systems installed~~

~~Number and size of other renewable energy systems installed~~

~~Other: \_\_\_\_\_~~

☐ ~~Tax Credits~~

~~Monetary value of tax credits given, by sector~~

~~Other: \_\_\_\_\_~~

☐ ~~Financial Incentives for Energy Efficiency and Other Covered Investments~~

~~Number and monetary value of financial incentive provided, by sector~~

~~Total value of investments incentivized, by sector~~

~~Other: \_\_\_\_\_~~

☐ ~~Technical Assistance~~

~~Number of information transactions contacts (for example, webinar, site visit, media, fact sheet) in which energy efficiency or renewable energy measure were recommended, by sector~~

~~Other: \_\_\_\_\_~~

## ATTACHMENT 6

### ☐ ~~Transportation~~

~~Number of alternative fuel vehicles purchased~~  
~~Number of conventional vehicles converted to alternative fuel use~~  
~~Number of new alternative refueling stations emplaced~~  
~~Number of new carpools and vanpools formed~~  
~~Number of energy efficient traffic signals installed~~  
~~Number of street lane miles for which synchronized traffic signals were installed~~

~~Other: \_\_\_\_\_~~

### ☐ ~~Workshops, Training, and Education~~

~~Number of workshops, training, and education sessions held, by sector~~  
~~Type of workshops, training, and education sessions held~~  
~~Number of people attending workshops, training, and education sessions, by sector~~

~~Other: \_\_\_\_\_~~

### ☐ ~~Other Activities Not Previously Defined~~

~~Pertinent metric information for any activity not defined above should be captured and included as needed~~

~~Other: \_\_\_\_\_~~

~~Other: \_\_\_\_\_~~

~~Other: \_\_\_\_\_~~

# ATTACHMENT 6

## EXHIBIT F

### Names and Addresses of Agreement Representatives

<b>Commission Contract Manager:</b>  (Name), MS- California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone Fax # e-mail: _____@energy.state.ca.us	<b>Contractor Project Manager:</b>  (Name) (Contractor Name) Address  Phone: Fax: e-mail:
<b>Commission Contract Officer:</b>  (Name), MS-18 California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone: (916) 654- XXXX Fax: (916) 654-4423 e-mail: _____@energy.state.ca.us  Deliver confidential deliverables to this location only.	<b>Contractor Contract Administrator/Officer:</b>  (Name) (Contractor Name) Address  Phone: Fax: e-mail:
<b>Invoices</b> , Progress Reports and Non-Confidential Deliverables to:  Accounting Office, MS-2 California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone: Fax: e-mail: _____@energy.state.ca.us	
<b>Legal Notices:</b>  Cheryl Raedel, MS-18 Manager, Contracts Office California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone: 916-654-4392 Fax: 916-654-4423 e-mail: <a href="mailto:craedel@energy.state.ca.us">craedel@energy.state.ca.us</a>	(contractor legal person)
	Contractor's Key Personnel:  (Individual's Names listed)
	Key subawardees or vendors:  (Company Names listed. Include names of individuals if they are key.)